

PUBLIC LAW BOARD NO. 7425

PARTIES ) SMART - TRANSPORTATION DIVISION  
TO )  
DISPUTE ) BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of Whitefish, Montana Student Engineer Brian Deweese for reinstatement to service with seniority rights unimpaired, removal of censure from his personal record and pay for all time lost including but not limited to the following: payment of vacation allowance, health and welfare costs, reimbursement of all expenses related to the pursuit of alternative employment, reimbursement for any damages incurred as the result of discharge from service including proceeds on any property, real estate or financial instruments sold to replace lost compensation, as a result of an investigation held on August 29, 2014. (Organization File No. D1840-349-14; Carrier File No. 50-15-0003D)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The Claimant is the same individual the subject of Case No. 111 (Award No. 111) wherein the Board upheld his dismissal from service in a proven charge of conduct unbecoming an employee while the Claimant was at his away-from-home terminal company-provided lodging facility in Hettinger, ND and while also drinking at a local American Legion hall on August 8, 2014 and into the early morning hours of August 9, 2014.

The issue in this case arises from the Claimant, who at the time was a student in the Carrier's Locomotive Engineer Training Program (LETP), having allegedly failed to comply with verbal and written instructions of notifying Road Foreman of Engines (RFE) Lehman when absent from student training duties/requirements for over two days.

In this respect, the Claimant was notified by letter of August 15 2014 that an investigation would be held on August 25, 2014 for the purpose of ascertaining the facts and determining the Claimant's responsibility, if any, in connection with an alleged failure to comply with verbal and written instructions of notifying RFE Lehman when absent from student engineer training duties and requirements for

over two days as discussed and instructed and for which the Claimant signed an acknowledgement statement during an orientation class on March 7, 2014.

Following an agreed upon postponement, the investigation was conducted on August 29, 2014. The Claimant was present for the investigation and assisted in a defense against the charge of record by a representative for the Organization.

By letter of September 17, 2014 the Carrier notified the Claimant that it had determined through testimony and exhibits brought forth at the investigation that he was in violation of GCOR 1.13, "Reporting and Complying with Instructions," and that he was dismissed from service effective that date in view of the current offense and in consideration of his discipline record.

Aforementioned GCOR 1.13 states:

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

According to RFE Lehman, while performing a standard check of LETP student progress on August 15, 2014 he noted that the Claimant had remained on the training board in excess of three days without performing any duties and, further, that the Claimant had not contacted him (RFE Lehman) during that time to explain his absence, a circumstance said to be a failure on the part of the Claimant to comply with known instructions.

Testimony and exhibits brought forth at the investigation show that the Claimant had tied up from last service performed at 0020 hours on August 12, 2014 and that the Claimant had neither contacted RFE Lehman nor performed any further service in excess of 72 hours, or over two days as set forth in the charge of record.

In defense of the Claimant, the Organization says that the Claimant was observing his mandatory 48 hours rest from duty under federal hours of service laws, and that although not required, the Claimant had a phone conversation with RFE Lehman prior to commencing mandatory rest.

The Carrier refutes the above contention, offering that the Claimant's RSIA unavailability is without merit or documentation of record. In this respect, the Carrier made the following unrefuted statement in its letter of April 2, 2015 in denial of appeal of the claim and to the Board:


First, RFE Lehman clearly states that during his conversation with the Claimant on August 11, 2014, no definitive mention of the

Claimant being on RSIA extended rest was made. Due to a reporting error, RSIA unavailability as it applied to the Claimant did not appear in the computer records. That said, the Claimant was off well in excess of the 48 hours required by RSIA (which ended on 8/14 at 0020) without any contact to FRE Lehman. As a result, this excuse also carries no weight. Further, Representative Hlad is confusing the FRA requirement for extended rest, with the FRA requirement for 10 hours of undisturbed rest, with the FRA requirement for 10 hours of undisturbed rest. The Claimant tied-up from his last service trip on 8/12/14 at 0020. He had less than 12 hours on duty, therefore his 10 hours of undisturbed rest ended at 1020 on 8/12/14. After that, while BNSF could not require him to perform any train related service; there is nothing in the RSIA provisions that prohibit contact between the Claimant and his supervisor. In fact, there is nothing in the RSIA requirements that prohibits the Claimant from initiating contact even with the 10 hour UDR period.

The Board finding the Carrier to have shown sufficient support of record for the assessment of discipline as concerns the charge of record, and in the light of the Claimant having been dismissed from service for his misconduct as set forth in Case No. 111, Award No. 111, the claim for a reinstatement to service will be denied.

Award:

Claim Denied.

  
Robert E. Peterson  
Chair & Neutral Member

  
Melissa A. Beasley-Coke  
Carrier Member

  
J. Michael LaPresta  
Organization Member

Fort Worth, TX

Dated: March 1, 2018