

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Longview, Texas Conductor Jason T. Northcross 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 October 8 , 2013. (Organization File No. D818-141-15; Carrier File No. 55-15-0027D)

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 was present for and provided opportunity to participate in the Organization's presentation of the claim.

This claim arises from the Claimant's admitted violation of System General Notice (GN) No. 37, Attendance Guidelines, as effective September 1, 2012, for the three-month rolling period of June, July and August 2013. At the time, the Claimant was working in 5-day assigned service and his maximum threshold of being off work in addition to two assigned rest days of Saturday and Sunday each week was one "any day" per month, totaling three any days for the three-month period of time at issue. According to the record as presented at an investigation conducted on October 8, 2013, the Claimant was unavailable for five week days, exceeding his threshold by two days.

By letter of October 30, 2013 the Claimant was notified that he was dismissed from service on the basis of testimony and exhibits having found him culpable as charged in violation of GN No. 37, GCOR 1.3.3, Circulars, Instructions, and Notices, and GCOR 1.13, Reporting and Complying with Instructions, and in consideration of his prior discipline record.

It is the position of the Organization that extenuating circumstances were the cause for the Claimant exceeding his attendance threshold. It is asserted that the Claimant's car broke down, and he had to take off on July 8, 2013 to get it fixed; the car being the Claimant's only means of transportation. On another occasion, August 16, 2013, the Claimant's 15-1/2 year old son had recently moved in with him and the Claimant was the only person that could take his son to school. It was also offered that the Claimant had gotten married "some two weeks ago" and that this matter of getting his son to school should no longer be a problem.

In response to Organization argument, the Carrier submits that the cited instances only address two of the five any days that the Claimant missed, offering that had the Claimant only missed two out of the five days he would not have exceeded his attendance-related threshold. The Carrier also says there is no record of the Claimant contacting his supervisor to discuss the alleged reasons for not reporting to work.

The record also shows that the Claimant marked off sick for the dates at issue, and that such mark offs were either the day before or the day after the two scheduled rest days of his assignment. As brought out in testimony at the investigation, if the Claimant had taken personal leave days or vacation days he could have avoided being in violation of the Attendance Guidelines.

It is also noteworthy that the record shows a pattern of the Claimant marking off sick prior to or after scheduled rest days. In July the Claimant laid-off sick for the 5th of July, prior to his two regularly assigned rest days of July 6 and 7, and then laid-off sick again for the 8th of July. This latter date is the day the Claimant asserted that he had to take off to get his car repaired. For August, in addition to laying off sick August 16 following his two scheduled rest days to reportedly take his son to school, the Claimant laid off sick on August 22nd before a vacation day and his two rest days.

As concerns assessment of the ultimate penalty of dismissal from service, the Carrier submits that in addition to the case at issue, the Claimant has a long history of attendance related violations; previously having been granted leniency when he stood for dismissal in July 2013 after accruing his fifth standard violation in a 12-month period, all past disciplines involving attendance violations.

The facts and circumstances in this case lead to a conclusion such as expressed in part as follows in Award No. 12 of Public Law Board No. 3350:


It is well established that an employer may terminate an employee for repeated lateness and absence, even if the employee sometimes has valid excuses. The reason for this rule is that an employer is not

obligated to keep an employee in service who cannot or will not reliably report for work as assigned.

It being evident that the Carrier has shown sufficient cause for its decision to dismiss the Claimant from service, the claim 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