

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Kansas City, Missouri Conductor Matthew S. Kennedy 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 April 8, 2015. (Organization File No. D1532-147-15; Carrier File No. 55-15-0041D)

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 employed by the Carrier on January 16, 2012 as a Conductor-Trainee, and thereafter promoted to Conductor. In this latter regard, the Claimant was required to pass his triannual Year B examination so as to maintain Conductor certification according to federal regulations (49 CFR Part 242) and Carrier certification requirements as scheduled no later than February 4, 2015.

When the Claimant failed to pass certification requirements by February 4, 2015 he was issued a notice under date of February 18, 2015 that an investigation would be held on February 24, 2015 for the purpose of determining his responsibility, if any, for "alleged failure to maintain Conductor certification according to federal regulations and BNSF certification requirements and BNSF training and programs."

The Carrier's System General (GN) Notice No. 83, Training and Certification, sets forth information involving the FRA certification guidelines and the Carrier's instructions and process for compliance with such guidelines. In part, the GN states that employees who do not complete their training for recertification by the assigned date will be held from service until the training has been successfully completed.

The Carrier instructions provide employees will be given advance time limit requirement notification of when their certifications are due on the employee's paperless tie up network screen. The record shows that the Claimant was so notified of his scheduled due date of certification being February 4, 2015.

Following four mutually agreed upon postponements of rescheduled dates, the investigation was held on April 8, 2015. The Claimant was present for the investigation and assisted in a defense against the charge of record by a representative of the Organization.

Subsequently, by letter of April 23, 2015 the Carrier notified the Claimant that it had determined through testimony and exhibits brought forth during the investigation that he was in violation of GCOR 1.6, Conduct, and that in view of this violation and in consideration of his discipline record that he was dismissed from service effective that same date, April 23, 2015.

It is the position of the Organization that although the Claimant admits he did not complete certification requirements by February 4, 2015, that the Claimant's certification was not due to expire until June 22, 2015; the only testing due by February 4, 2015 was the Claimant's Year B requirements.

The Carrier submits that the Organization argument is without merit in that the Claimant admitted that he knew about the deadline to complete training but failed to do so. Further, the Carrier submits that it is well known and accepted that it staggers its training deadlines for employees in order to avoid having too many employees at risk for losing their certification at the same time. The Carrier also submits that it is flexible in working with employees who communicate a need to extend their scheduled deadlines, but in this case the Claimant ignored the training requirement and admittedly did not reach out to the Manager of Field Training to attempt to change or adjust the schedule February 4, 2015 date for completion of certification.


The Carrier says that although after starting his certification requirements on February 11, 2015 while being held out of service pending an investigation that the Claimant did pass recertification after three failed attempts on February 26, 2015 that this was clearly untimely. Thus, the Carrier says its dismissal of the Claimant is appropriate as it was his fifth active violation of rules and instructions in a 12-month period; the Claimant's disregard for the passing of certification by the scheduled date of February 4, 2015 demonstrating yet another indifference toward employment responsibilities and obligations.


In this latter regard, it is noted that at the investigation the Claimant said, "I was just putting it off" and he did not give any thought to being held out of service for his going beyond the February 4, 2015 deadline.

Lastly, as concerns Organization contentions that while the Claimant's record as a short term employee is less than acceptable that it believes that if the Claimant is given the opportunity to demonstrate that he has learned from the series of events that shaped his brief career that he may yet prove to be a valuable asset to the Carrier. As stated in numerous past arbitral decisions, leniency is not something that a board such as this may take into consideration by way of a leniency reinstatement to service, that is something the sole prerogative of the Carrier.

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