

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Birmingham, Alabama Switchman Keith A. Roberson for removal of Standard Formal Reprimand and One (1) Year Review Period assessed and pay for all time lost as the result of an investigation held September 8, 2015. (Organization File No. D847-323-15B; Carrier File No. 55-16-0013D)

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 with the Organization's presentation of its case to the Board.

It is evident in study of the record that the Carrier has not met a burden of proof to support its discipline determination that the Claimant was guilty as charged of having exceeded a layoff threshold of three "any day" absences under the Attendance Guidelines for the three month rolling period of May, June and July 2015. The Claimant was said by the Carrier to have exceeded his threshold by two days.

As brought forth at the investigation into the charge it is evident as concerns July 2, 2015 being listed on a Carrier exhibit entitled, "Employee Summary Rolling 3 Month View," as the Claimant being "unavailable" should not have been recognized as a date of absence under the Attendance Guidelines. The date of July 2, 2015 was shown on the summary exhibit as a Claimant failure to "tie up" at the end of his shift; a circumstance that reportedly calls for an employee to be marked on crew desk records as being held from service under Carrier and FRA rules. Although a failure to tie up may be viewed as a serious violation, the fact remains that another exhibit presented into evidence at the investigation, i.e., the daily work history for the Claimant, shows the Claimant to have worked on July 2, 2015.

In a second instance, the Claimant was properly shown on the exhibits as having been a "no show" for July 17, 2015. However, it was testimony of Birmingham Terminal Manager Hauber that, "we did excuse this one weekday because Mr.

Roberson did call in and said he had some tire issues on the highway and we allowed him [to be excused] his day of work on that day due to the issue he did have.”

Under the circumstances of record the Board will direct that the claim be sustained and the Claimant paid for all time lost.

Award:

Claim Sustained.



Robert E. Peterson
Chair & Neutral Member



Melissa A. Beasley-Coke
Carrier Member



J. Michael LaPresta
Organization Member

Fort Worth, TX

Dated: March 1, 2018