

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

**Claim of Springfield, Missouri Conductor Stefan M. Wadlow 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 26, 2015. (Organization File No. D303-416-15B; Carrier File No. 55-16-0048)**

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 issue that gives rise to this dispute involves a question as to whether there exists mitigating circumstances for the Claimant having exceeded the limited number of his threshold weekday and weekend day absences for the three-month measurement rolling period of May, June and July 2015 in violation of the Attendance Guidelines Policy (ATG Policy).

An investigation into this matter, at which the Claimant was in attendance, followed six postponements before being held on October 26, 2015. The Claimant was thereafter notified that he was dismissed from service by letter of November 10, 2015; the Carrier stating in this letter that in assessing discipline consideration was given to the Claimant's discipline record.

It is undisputed that the Claimant had exceeded his allotted time off from work, or threshold, under the ATG Policy by one weekday and three weekend days.

At the investigative hearing the Claimant testified as follows:

During the months of May, June and July I was struggling with depression and I honestly, I didn't know exactly what was wrong with me. I didn't, I knew that I didn't feel safe going to work because I didn't know what I might do, honestly. I, I was having thoughts of, you know, not necessarily suicide, but I went to bed every night, you know, praying to not wake up in the morning. And, I didn't feel like I was safe going to work.

In response to a question from his representative as to what would he have done differently if had the three months to do over again, the Claimant said:

I would have seeked help. I would have, uh, I would have gone to my counselor, or I would have tried to see my counselor and then see a psychiatrist and get the medicine I needed. And, or, and then from there I would have tried to get FMLA if I could have and layoff the correct way or get medical leave had I have known and do it that way.

When the Claimant's representative said to the Claimant, "So you, you didn't know of all your options at the time," the response of the Claimant was:

Correct. I didn't know that I could take a medical leave for depression, you know, for a- and honestly I didn't know what was going on. It wasn't until it was suggested to me that maybe something was going on and that I should seek help.

In a closing statement the Claimant said

So, I came home from Nebraska in March, and I had been feeling like, you know, maybe I sort of wasn't feeling right. And I thought coming home would help. And, it turned out that it really didn't. And, I sort of just started, you know, laying off and staying home and not being able to, like, go out and be around people. And, it turned into, like, sort of a serious deal. And, every time that I would lay off work, I had started, like, ha- I hated laying off. I didn't like doing it and it just upset me. And, it just, you know, kind of pushed me further down. And, I didn't feel, I started, you know, having these thoughts that I didn't feel very well and that I had, you know, no- not that I would want to commit suicide, like I said, but, you know, that I just wanted to give up. I didn't want to keep trying. So, it wasn't until around June that it was suggested to me that, you know, I might need some help. And I, uh, went to a counselor and he suggested that exact day that I see a psychiatrist. And, the psy- psychiatrist, uh, diagnosed me with depression and anxiety. And, since then, I have been taking medicine, and I do feel better. And, I wish I could have handled

**things differently had I known. I wish I had known, you know, that this was something I could be on medical leave for, but I didn't.**

**No evidentiary documentation was presented in support of the Claimant's assertions of his having been diagnosed as having a psychological ailment of depression and anxiety. The Organization, however, says that consideration should be given to the Claimant's statement in that the Claimant's work history as presented at the investigation shows that he had been granted a medical leave of absence from June 23 through July 21, 2015. The Organization here posits that a medical leave of absence for the Claimant would not have authorized by the Carrier without supporting documentation from a health care professional.**

**The Organization also contends that although the Carrier has technically shown the Claimant exceeded his threshold during the three month review period it has acted in a "rigid and wooden" manner contrary to provisions of System General Notice 37 (the ATG Policy), wherein it states:**

**Local members of the BNSF transportation management team are specifically empowered to apply these Guidelines considering all relevant information. Managers should never act in a rigid of "wooden" manner, and in every case should use "common sense." We also invite and encourage local union leaders to give their input in the application of these Guidelines in individual cases, and, generally to be "part of the process."**

**The Carrier says while there is no question that the Claimant "took a medical leave of some sort" between June 21 and July 23, 2015, his attendance remained subpar after he returned to service. Further, the Carrier submits that the Claimant admittedly never communicated with his supervisors about any alleged personal issues during the months of May, June and July 2015 and that a last ditch effort to avoid dismissal from service is not compelling in light of the current violation when viewed in the light of the Claimant's past prolonged, abhorrent attendance history of nine prior attendance related violations.**

**In studied consideration of the record the Board questions the Claimant having stated that he "didn't feel safe going to work" because he did not know what he would do in that the Claimant never brought any safety concerns or mental-health challenges of depression and anxiety to the attention of his supervisors. Instead, without mention of any such alleged concerns, the Claimant remained silent and continued to work for most of the 76 days after having been notified on August 10, 2015 that an investigation was scheduled to determine his responsibility, if any, in connection with his alleged failure to perform service as a full time employee for the three months at issue. This 76-day period of time while the date for the investigation was being continually postponed. It was only at the investigation on October 26,**

2015 that the Claimant expressed any safety concern as a matter of record; four months after the Claimant asserted that he had been diagnosed with depression and anxiety the latter part of June 2015 and didn't feel safe in going to work.

The Board cannot be unmindful of the Carrier's responsibility and liability for the safe operation of its transportation services and facilities in assuring that employees are physically and mentally fit to hold their respective positions. Employees need fully recognize that being entrusted with the safety of fellow employees and the public it is necessary that they notify the Carrier at the time they are diagnosed with a physical or mental condition that will affect an ability to work in a safe manner. Employees should not wait until cited for a violation of rules or policies to offer an unreported condition as a reason that prevented their reporting for work, albeit in the case at issue contentions of having been diagnosed with depression and anxiety is unsubstantiated and appears to be of a fictitious nature.

In this latter respect, when the Claimant was initially asked by his representative as to what he would have done if he had the three months to do over the Claimant here said, "I would have tried to see my counselor and then see a psychiatrist and get the medicine I needed." We note this response since the record does not show the basis for the Claimant's medical leave of absence from June 23 through July 21, 2015, and the Claimant having said in reply to his representative's questioning, "I didn't know I could take a medical leave for depression." This response indicates that the leave of absence was not for having been diagnosed with depression and anxiety.

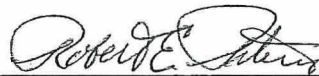
The Board also questions the Claimant having stated that after he came home from Nebraska in March "he started laying off." The record shows that on August 21, 2008 the Claimant had his first discipline for a violation of the ATG Policy, and, more recently, for each year from May 2011 to May 2015 the Claimant has been disciplined for attendance related violations, a total of nine instances.

In the circumstances of record, the Board finds no basis to disturb the Carrier assessment of the Claimant's dismissal from service.

Award: Claim Denied.



Melissa A. Beasley-Coke  
Carrier Member



Robert E. Peterson  
Chair & Neutral Member



J. Michael LaPresta  
Organization Member

Fort Worth, TX

Dated: March 27, 2018