

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Montana/Dakota Third Seniority District (Glasgow, MT) Engineer Gregory A. Qualls 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 September 14, 2015. (Organization File No. D1840-467-15; Carrier File No. 54-16-0001D)

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.

On September 3, 2015 the Claimant was assigned as the Engineer, together with a Conductor and Brakeman, to operate two locomotives (light power) from Bainville, ND to Plentywood, ND on the Scobey Subdivision, a distance of 52 miles, and return on September 4, 2015 to Bainville. Train orders for the Claimant's trip placed a 10 mph maximum speed restriction for travel between MP 0.0 and 54.4 on the Scobey Division, or between the points of the train's operation. The Claimant and crew departed Bainville at 2040 hours on September 3, 2015 and arrived at Plentywood at 0015 hours on September 4, 2015, for a total travel time of three hours and thirty-five minutes. The return trip was made in four hours and fifteen minutes.

The time in which the Claimant and crew had performed this round trip raised a question with Terminal Manager Tracy, in that he had not seen any other crew cover the territory in that amount of time. At the same time, Mr. Tracy recalled that the Conductor member of the crew, Mr. Cortwright, had contacted him at the beginning of the shift and expressed his desire to traverse as much of the branch line as possible that shift on account of a scheduled service appointment for his truck on September 4, 2015. Mr. Tracy then instructed Road Foreman of Engines Benz to

audit the locomotive tapes to determine the speed of the engines during the Claimant's shift.

Following the audit, by notice of September 4, 2015, the Claimant and crew were notified to report for an investigation in a charge of misconduct during their performance of duties by willfully exceeding the 10 mph speed restriction placed on the Scobey Subdivision, carelessly speeding, endangering themselves and others from 2055 hours on September 3, 2015 through 0454 hours on September 4, 2015 while assigned as crew members on the L-MON8411-03, on duty at 1930 hours on September 3, 2015 at Williston, ND.

Following the investigation the Claimant was notified by letter of September 28, 2015 that the Carrier had determined through testimony and exhibits brought forth during the investigation that he was in violation of GCOR 1.6, Conduct, GCOR 1.47, Duties of Crew Members, and ABTHR 101.11, Operative Speed Indicator, and that he was dismissed from service effective that same date, September 28, 2015. The letter stated that in assessing discipline consideration was given to the Claimant's discipline record. The latter showed that at the time of the incident the subject of this dispute that the Claimant had been previously assessed on March 3, 2010 discipline of a Level S 30-Day Record Suspension and 36 Month Review Period for failing to have properly lined a derail to protect a shoving move, resulting in a derailment. The Carrier's Policy for Employee Performance Accountability (PEPA) states: "A second serious violation within the applicable review period may result in dismissal."

The Board has studied the hearing record. Although the record shows an extensive amount of data was put forth in support of the charge of record, it is also evident that reason exists for the Claimant and the Organization to have questioned or challenged certain conclusions with respect to the speed at which the train had operated. In this respect it is noted that Air Brake and Train Handling Rule 101.11 states that locomotive speed indicators must be accurate within plus or minus 3 mph for speeds between 10 to 30 mph. The fact remains, however, that it is evident that the Claimant had not maintained a constant speed when operating the light engines, a download showing it to have been traveling 17 to 18 mph, or 70 to 80% above the 10 mph maximum speed restriction. It is also undisputed that whereas traveling 52 miles at 10 mph should have taken the Claimant and crew a little over five hours, they made the trip in three hours and thirty-five minutes, which calculates to have been at an average speed of 14.51 mph (52 miles/3.5833 hours).

The Board has also given studied consideration to the several procedural arguments as presented by the Organization. We are not persuaded that the contentions offered are of sufficient substance to hold that the Claimant was denied benefit of a fair and impartial hearing or reason to hold that discipline be set aside.

It is evident that the Claimant committed a serious violation of applicable rules in willfully disregarding speed restrictions in effect for operation of trains over the Scobey Subdivision that are established for the safety of employees, the public, and the protection of commodities being shipped by customers that might result from an accident or derailment. Accordingly, the Board finds that the Carrier has shown just cause for its dismissal of the Claimant from service. Any lesser penalty or reinstatement to service on a leniency basis is 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 27, 2018