

**PUBLIC LAW BOARD NO. 7833**

**SMART - TRANSPORTATION DIVISION \***

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**CASE NO. 11**

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**AWARD NO. 11**

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**and**

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**BNSF RAILWAY COMPANY \***

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**STATEMENT OF CLAIM:**

Claim for the denial of the discipline claim of Wyoming Seniority District (Alliance) Engineer J.J. Carey for our request for removal of censure from his personal record and pay for all time lost (10-day record suspension) as the result of an investigation held on December 16, 2015.

**FINDINGS**

Claimant J. J. Carey was charged with reporting to work late. On November 26, 2014, an auto caller called him at 6.35 and notified him to report to work at 8:00. He did not report to work as directed. A trainmaster called him at 8:35 and he reported to work at 9:00. As a result of the investigation, the Carrier notified the Claimant on December 28, 2015, that he was assessed a 10-day record suspension and a 12-month review period. The Organization filed a claim on behalf of the Claimant on February 11, 2016. The Carrier denied the claim on April 8, 2016. The matter was then progressed in accordance with the Parties' Agreement, after which, it remained in dispute. It is properly before the Board for resolution.

It is the position of the Carrier that the Claimant was afforded a fair and impartial

hearing. The Carrier points to the testimony of Terminal Trainmaster Brian Roberts, who stated that the Claimant was aware of General Code of Operating Rules, which state:

#### **1.15 Duty-Reporting or Absence**

**Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend time on duty working for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal.**

#### **1.16 Subject to Call**

**Employees subject to call must indicate where they can be reached, and must not be absent from their calling place without notifying those required to call them.**

Mr. Roberts testified that the initial call from the auto caller was made at 6:36 and notified Claimant to report for work at 8:00. Claimant did not report to work and was called by a person at 8:35. Claimant arrived at work at 9:00.

The Claimant testified that he was aware of the rules. He said he was prescribed some medication, which caused him to perform tasks while sleep, but not remember the tasks. In this case, he answered the auto call while sleeping, but did not remember that he had done so. He stated that he answered the call and spoke with someone, maybe the trainmaster, and speaking to someone woke him up sufficiently that he remembered the call and went to work. Claimant said he had a similar problem with the medication before this incident, and after this incident he had his medication changed.

The Organization points out that the Claimant was a long service employee with a medical condition who took responsibility for the incident and apologized for it. It points out

that in addition, he took steps to prevent the incident from happening again. The Organization insists that the Claimant's medical condition presented extenuating circumstances that should have been taken into consideration, and that he should not have been assessed any discipline. It also notes that the review period has expired, and argues that the discipline should be removed from his record.

### **OPINION OF THE BOARD**

The Board has reviewed the record in this case, including the transcript of the formal investigation and the documentary evidence presented at that hearing. The record reveals that the Carrier has rules about missed calls and reporting to work. The Claimant acknowledged that he was aware of the rules and arrived late to work. Thus, the evidence supports the Carrier's assessment of discipline. In addition, the attendance guidelines state that attendance violations are not cleared from an employee's record.

Therefore, under the particular circumstances presented in this case, and on the weight of the evidence before us on the record, the Board concludes that the censure will not be removed from the Claimant's personal file.

**AWARD**

The claim is denied.

*Lisa Charles*

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Neutral Member

*Tommy Bossella*

Carrier Member

*J B B*

Organizational Member

April 6, 2018

Dated \_\_\_\_\_