

PUBLIC LAW BOARD NO. 7833

SMART - TRANSPORTATION DIVISION *

CASE NO. 12

AWARD NO. 12

and

BNSF RAILWAY COMPANY *

STATEMENT OF CLAIM:

Claim for the denial of the discipline claim of Wyoming Seniority District (Gillette) Brakeman D. E. Raley and our request for removal of censure from her personal record and pay for all time lost (formal reprimand) as the result of an investigation held on March 18, 2015.

FINDINGS

Claimant D. E. Raley was charged with being unavailable four any days, which exceeded her allotment by one day during the three-month rolling period of December 2015, January 2016, and February 2016. As a result of the investigation, the Carrier notified the Claimant on March 28, 2016, that she was assessed a formal reprimand and a 12-month review period. The Carrier denied the claim on March 28, 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 testimonies of Senior Trainmaster Chadwick Hansen and Superintendent of Operation Scott Mobley. Mr. Hansen testified that Claimant was aware of

System General Notice Number 37 - Guidelines for TYE and Yardmaster Attendance. The guidelines state in relevant part:

BNSF TYE employees and Yardmasters are key members of our community, and have a legitimate expectation of reasonable opportunity to be off from work. And, along with all other members of our community, BNSF TYE employees and Yardmasters share certain responsibilities to the community as a whole. One of these basic responsibilities is to be “full-time” employees.

I. Specific principles for applying these Guidelines follow:

1. Each employee’s compliance will be measured on a “rolling” three-month basis to better accommodate periods of intermittent illness. Each month is calculated independently and then combined to determine the threshold for the three-month period. The three-month rolling basis applies regardless if the employee has been in active service for the full three months.

2. Employees in 5-day assigned service (includes 05/02 extra boards) have a maximum threshold of one day per month. Employees in 6-day assigned service have a maximum threshold of two weekdays and one weekend day each month; however, employees in 6-day assignments that work five days a week with one RSIA day and one rest day have a maximum threshold of one day per month.

II. Discipline handling (including progression and the applicable review period) for Attendance Guidelines violations follows:

B. Review Period

The TYE Attendance Guidelines review period is an “active” review period and requires an employee work a period of time which exceeds a complete 12 month period without another Attendance Guideline discipline incident before the prior Attendance Guideline violation is considered “inactive”. However, attendance violations will not be “cleared” from an employee’s record.

Mr. Hansen stated that the Claimant was also aware of the General Code of Operating

Rules, which state the following:

1.3.3 Circulars, Instructions, and Notices

Circulars, instructions and notices, and other information are issued and canceled by the designated manager. Before beginning each day's work or trip, crew members and any others whose duties require, must review those that apply to the territory they will work on.

1.13 Reporting and Complying with Instructions

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

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.

Mr. Hansen testified that Claimant was a 5-day assigned employee for the entire three months, which means that she was allotted one lay off day each month. He said that Claimant was allotted three lay off days during the three-month rolling period, but she laid off four days, which exceeded her allotment by one day. The Carrier asserts that the discipline was warranted.

The Claimant stated that she was aware of the attendance guidelines and rules. She testified that she was sick on February 10, 2016, and requested a paid leave day (PLD) because she knew laying off would put her in violation of the attendance guidelines. She said her request was denied. She stated that she spoke with Scott Mobley, who told her not to worry about an attendance violation and he would take care of it.

Mr. Mobley testified that the Claimant spoke to him a couple days after she laid off in February and again a couple weeks later. He said he initially told her not to worry about it. He said he later explained to her that the attendance violation was not just a matter of one day in February, but that she took too many lay off days in the three-month rolling period. He stated that she thought that she had to use the lay off day each month or lose it. He explained to her that was incorrect. Mr. Mobley stated that a PLD would be denied if it put an employee over the allocated days in the three-month rolling period.

The Organization argues that the Claimant laid off on February 10, 2016 because she was ill. It points out that the Claimant requested to use a PLD because she knew laying off would put her in violation of the attendance guideline. The Organization asserts that she took the additional step of speaking with a manager to mitigate the situation before the investigation. It argues that all the relevant information, specifically her conversations with her manager, was not taken into consideration before the discipline was assessed.

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 posted attendance guidelines and rules. The Claimant acknowledged that she was aware of the guidelines and rules, and that she exceeded her allotted days. 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

Neutral Member

Tommy Bossalun

Carrier Member

JB R

Organizational Member

Dated April 6, 2018