

**PUBLIC LAW BOARD NO. 7833**

**SMART - TRANSPORTATION DIVISION \***

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**CASE NO. 2**

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**AWARD NO. 2**

**and**

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**BNSF RAILWAY COMPANY \***

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**STATEMENT OF CLAIM:**

Claim for the denial of the discipline claim of Nebraska District (Lincoln) Engineer N.C. Payne and our request for removal of censure from his personal record and pay for all time lost (10-day record suspension) as a result of an investigation held on June 17, 2015.

**FINDINGS**

Claimant N. Payne was charged with being unavailable eight weekend days, which exceeded his allotment of six days by two days during the three-month rolling period of March, April and May 2015. As a result of the investigation, the Carrier notified the Claimant on July 8, 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 July 29, 2015. The Carrier denied the claim on August 20, 2015. 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 violated General Code of Operating Rules (GCOR) and System General Notice No. 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:**

**4. For employees in unassigned and mixed service, there is a maximum threshold of twenty-five percent of weekdays and weekends, measured separately. (25% less the total of all rest days equals final threshold.)**

**11. Any layoff touching a weekend day will be considered a weekend day, with a 30-minute grace period. As a result, an employee may be charged with three weekend days for a given week.**

**12. Any layoff period from 0-25 hours is considered as one unavailable day.**

**13. Working a portion of a calendar day does not negate a layoff period that begins or ends on that day from counting as an unavailable day for the purpose of attendance.**

**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.**

The Carrier claims that the Claimant was afforded a fair and impartial hearing. The Carrier asserts that the Claimant exceeded his weekend threshold by two days. It points out that the Claimant’s family situation accounted for only one weekend day and no explanation was

given for the other seven weekend days when the Claimant was unavailable. The Carrier argues that this was the Claimant's second attendance violation in a 12-month period, and that the discipline was warranted.

Mike Klatt, the Road Foreman, testified at the hearing that the Claimant was an unassigned employee for the entire three months, which means that he did not have assigned days off. He said that employees have a responsibility to maintain their full-time status by being available for 75% of the weekend days in a three-month rolling period. He stated that there were 24 weekend days. The Claimant was allotted six days or 25% unavailability threshold, but laid off for eight days, which made his availability rate 67%.

Mr. Klatt relied upon the System General Notice No. 37, and stated that the Claimant was charged with three weekend days because his layoff on Friday, May 15, 2015, was long enough to be counted as two days, and that his layoff on Sunday of that same weekend was considered a separate weekend event. On cross examination, Klatt stated that the Claimant actually was allotted 6.75 days, and that the 0.75 would have been rolled up such that the Claimant would have had a seven-day allotment threshold during the rolling three-month period. The Carrier asserted that even with the roll up to seven days, the Claimant still exceeded his allotment.

The Claimant stated that he was aware of the attendance guidelines and rules, and that he did all he could to comply with them. The Claimant accepted responsibility for exceeding his threshold. He said that one weekend he had a family emergency, which caused him to layoff because his teenage son took his car and went missing.

The Organization maintains that the Claimant's extenuating circumstances with his son should allow this matter to be reconsidered. The Organization argues that the Claimant is a good

employee with 16 years of service at the time of this attendance violation. It notes that the Claimant accepted responsibility for his actions. The Organization insists that the discipline has served its purpose and should be removed from his personal record.

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 he was aware of the guidelines and rules. He also acknowledged that he exceeded his allotted time off. In addition, a review of the Claimant's personal record reveals that he had another attendance violation within the 12-month review period of this incident. Moreover, 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 Bessalle*

Carrier Member

*J B Bm*

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Organizational Member

April 6, 2018  
Dated \_\_\_\_\_