

PUBLIC LAW BOARD NO. 7833

SMART - TRANSPORTATION DIVISION *

CASE NO. 3

AWARD NO. 3

and

BNSF RAILWAY COMPANY *

STATEMENT OF CLAIM:

Claim for the denial of the discipline claim of Nebraska District (Lincoln) Conductor T.W. Seats and our request for removal of censure from his personal record and pay for all time lost (formal reprimand) as a result of an investigation held on September 2, 2015.

FINDINGS

Claimant T. Seats was charged with being unavailable 8 weekend days, which exceeded his allotment of 6.5 weekend days by 1.5 days during the three-month rolling period of May, June and July 2015. As a result of the investigation, the Carrier notified the Claimant on September 16, 2015, that he was assessed a formal reprimand and a 12-month review period. The Organization filed a claim on behalf of the Claimant on December 11, 2015. The Carrier denied the claim on April 6, 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 Division Trainmaster Matthew Crossno, who stated 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:

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.

Mr. Crossno testified 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 time in a three-month rolling period. The Claimant was allotted 6.5 days or a 25% unavailability threshold, but he laid off for 8 days, which brought his availability rate to 69%.

Mr. Crossno stated that the Claimant also violated two 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.

He said that the rules require the crew members to access the TSS application and review notices that apply to the territory where they will be working. He said the System General Notice Number 37 is found on the TSS application. The Carrier points out that the Claimant offered no explanations for his absences. The Carrier notes that this was the Claimant's first attendance violation in a 12-month period and the discipline was warranted.

The Claimant stated that he was aware of the attendance rules. He said he attempted to use personal leave days to protect his availability, but there were no allocations available. He pointed out that two Mondays were counted as weekend layoffs, because they touched

weekends, which caused him to exceed his threshold.

The Organization disputes that the Claimant had a fair hearing. The Organization argues that it was unfair for the hearing officer to read what he wanted into the record. It contends that the hearing officer asked the Claimant questions after he gave his closing statement, which violated the Claimant's due process rights. It challenged how the weekend days were counted and pointed to the unreasonableness of counting weekdays as weekends. The Organization said it was unfair that Claimant was charged twice for layoffs in one day. Moreover, the Organization points out that the discipline is no longer active, it has served its purpose, and should be removed from the Claimant's personal 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 posted attendance guidelines and rules. The guidelines state that weekdays that touch weekend days will be counted as weekend days. The Claimant acknowledged that he was aware of the rules. 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 Bossellen

Carrier Member

JBR

Organizational Member

April 6, 2018
Dated _____