

PUBLIC LAW BOARD NO. 7833

SMART - TRANSPORTATION DIVISION *

CASE NO. 4

AWARD NO. 4

and

BNSF RAILWAY COMPANY *

STATEMENT OF CLAIM:

Claim for the denial of the claim of Illinois-Wisconsin Seniority District (Aurora) Conductor J.L. Falls and our request for the removal of censure from his personal record and pay for all time lost (formal reprimand) as a result of an investigation held on September 15, 2015.

FINDINGS

Claimant J. Falls was charged with failure to report to work. He was marked as unavailable at 4:44 on August 4, 2015, after he failed to respond to several calls from the crew caller. As a result of the investigation, the Carrier notified the Claimant on October 6, 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 3, 2015. The Carrier denied the claim on December 10, 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 Brad Staff, who stated that the Claimant was aware of General Code of Operating Rule 1.16 - Subject to Call. The rule

states:

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. Staff testified that the Claimant was called numerous times by the crew caller and failed to answer his phone. Mr. Staff played an audio recording of a conversation between the Claimant and the crew caller. The audio recording revealed that the crew caller indicated she started calling him about 4:00 a.m. and laid him off at 4:44 a.m. The crew caller told the Claimant that she had personally called him about 10 times and the calls went to his voice mail. The audio revealed that the Claimant called the crew caller at 5:05 a.m. He said he woke up and checked his phone, which indicated that he had missed calls.

Mr. Staff testified that the policy allows employees 15 minutes to respond after the initial call from the crew caller and two hours to report for work. He said the start time for the job was 6:16. On the audio, the earliest time noted from the crew caller was 4:32 and the last call was at 4:43. Mr. Staff said that the call may have been a late call, and that the crew management office is responsible for entering the data into the system. The evidence did not reveal what time the initial call was made and the crew caller did not testify.

The Claimant testified that he was aware of the Subject to Call rule. He said he called in to the crew office because he was expecting to be called in to work for a 7:00 a.m. start time, but his phone had not rung. He said that he spoke with the crew caller and did not dispute the audio of their conversation. The Claimant testified that he worked later that day, but did not recall what time he started.

The Organization disputes that the Claimant had a fair hearing. The Organization points out that the crew caller, who had first hand knowledge of the conversation and the data she entered into the system, did not testify. It argues that there was no evidence to determine what time the initial call was made, or that the Claimant was given 15 minutes to respond to it. The Organization insists that Mr. Staff did not have first hand knowledge that the crew caller properly placed the calls or accurately imputed the time of the calls into the system.

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 a rule about missed calls. The Claimant acknowledged that he was aware of the rule, and that on August 4, 2015 his phone indicated he had missed calls. The uncertainty about when the initial call was made does not negate the fact that the Claimant did not respond to numerous calls to report to work. It is undisputed that he called the crew caller at 5:05, which is more than 15 minutes from when the crew caller last called him at 4:43. Thus, the evidence supports the Carrier's assessment of discipline.

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 Bossaller

Carrier Member

JBB

Organizational Member

Dated April 6, 2018