

PUBLIC LAW BOARD NO. 7833

SMART - TRANSPORTATION DIVISION *

CASE NO. 7

AWARD NO. 7

and

BNSF RAILWAY COMPANY *

STATEMENT OF CLAIM:

Claim for the denial of the discipline claim of Nebraska Seniority District (Lincoln) Conductor C.J. Shubkagel and our request for removal of censure from his personal record and pay for all time lost (reprimand) as the result of an investigation held on December 2, 2015.

FINDINGS

Claimant C. Shubkagel was charged with being unavailable seven weekend days, which exceeded his allotment of six weekend days by one day during the three-month rolling period of July, August, and September 2015. As a result of the investigation, the Carrier notified the Claimant on December 17, 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 April 12, 2016. The Carrier denied the claim on July 29, 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 Manager Chris Musgrove, 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. Musgrove 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 six days or a 25% unavailability threshold, but he laid off for seven days, which brought his availability rate to 71%. The Carrier asserts that the discipline was warranted.

Mr. Musgrove said the attendance guidelines are communicated through the System General Notices found on the computer system. He also stated that the Claimant violated the three 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.

The Claimant stated that he was aware of the attendance rules. He testified that he did not know that weekend days could not be taken in half days when he laid off on September 26, 2015. He said that he worked earlier that day.

The Organization disputes that the Claimant had a fair hearing. The Organization argues that it was unfair for the hearing officer to lead the Carrier's witness to conclusions about the Claimant's guilt. It stated that the Carrier could not have gotten any more work time from Claimant since he worked nine hours on September 26, 2015. It argues that common sense was not used in applying the rule, and that the rule was applied in a wooden and rigid manner. 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 rules. The application of the rules explains how days are counted and allows for employees to be marked as unavailable even if they work a portion of a day. 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 discipline will not be removed from the Claimant's personal file.

AWARD

The claim is denied.

Lisa Charles

Neutral Member

Tommy Bergman

Carrier Member

JB

Organizational Member

April 6, 2018
Dated _____