

PUBLIC LAW BOARD NO. 7833

SMART - TRANSPORTATION DIVISION *

CASE NO. 8

AWARD NO. 8

and

BNSF RAILWAY COMPANY *

STATEMENT OF CLAIM:

Claim for the denial of the discipline claim of Nebraska Seniority District (Lincoln) Conductor S.D. Eddings 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 8, 2015.

FINDINGS

Claimant S. D. Eddings 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 July, August, and September 2015. As a result of the investigation, the Carrier notified the Claimant on December 18, 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 14, 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 Trainmaster Peter Feyerabend, 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.)

8. National Guard, Drill, Training, State Emergencies will also count the same as on duty time; however, employees will need to provide their supervisor a copy of their orders or LES for this time to be counted as available.

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. Feyerabend 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 68%.

Mr. Feyerabend stated that he was Claimant’s supervisor, and that Claimant took a military leave from August 8 until around midnight September 18, 2015. He testified that on the Carrier’s website there is assistance available to employees regarding military leave, which provides a link on the labor relations page and lists a contact person assigned to assist with military leaves. He said Claimant was aware of item 8 of the System General Notice Number 37, which requires employees to provide a copy of their orders to their supervisor. Mr. Feyerabend testified that the Claimant did not provide orders or contact him about an additional 8 hours of rest time following his military leave.

Mr. Feyerabend said that the General Code of Operating Rules (GCOR) require that before beginning each day’s work or trip the crew members must access the computer system and review notices that apply to the territory where they will be working. He said the attendance guidelines are communicated through the System General Notices found on the computer system. He also stated that the Claimant violated GCOR 1.13 - Circulars, Instructions and Notices, GCOR 1.15-Duty Reporting or Absence Employee, and GCOR 1.33 – Reporting and Complying with Instructions. The Carrier asserts that the discipline was warranted.

The Claimant stated that he was aware of the attendance rules. Claimant noted that his military leave ended on September 18, 2015 at 23:59. He testified that when he laid off at 6:16 on September 19, 2015, he did not apply for the rest period, but thought he was complying with the federal law, which requires an 8-hour rest period after a military leave. He testified that he spoke with the military leave contact person and provided her with copies of his orders and LES. He stated that she told him there was a system notice that outlines all the information about military leaves, but she did not know the number. He said he could not find it on the Carrier's website. Claimant stated that when the contact person did not know an answer, she referred him to a local supervisor, and that he contacted the local supervisor. He said he did not know Mr. Feyerabend and had not heard of him until he received notice of the hearing.

The Organization disputes that the Claimant had a fair hearing. The Organization argues that the Military Overview Summary on the Carrier's website states the following:

Uniform Service Employment and Reemployment Rights Act

Leaves 1-30 days – Employees must report to work by the beginning of the first regularly scheduled work day.

You are allowed reasonable time off if travel is necessary in order to be properly rested upon your return to work. Please discuss any additional time off with your local supervisor and make sure it is included with your submitted leave form.

The Organization points out that it is unreasonable for the Claimant's military duty to end on September 18, 2015, at 23:59 and expect him to report to work at the beginning of his first regularly scheduled, which was two minutes later. It points out that there is a federal mandate of an 8-hour rest period and Claimant was protecting that provision when he laid off at 6:16 on September 19, 2015. It noted that the Claimant's military assignment was not domestic and he

had been away from his family. 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 and resources available for military leave assistance. The Claimant acknowledged that he was aware of the rules and utilized the resources available for military assistance. The evidence did not reveal that the rest period was included in his orders or that the Claimant applied for additional time following his military leave. 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 censure will not be removed from the Claimant's personal file.

AWARD

The claim is denied.

Lisa Charles

Neutral Member

Tommy Bossalini

Carrier Member

JBR

Organizational Member

Dated April 6, 2018