

PUBLIC LAW BOARD NO. 7833

SMART - TRANSPORTATION DIVISION *

CASE NO. 9

AWARD NO. 9

and

BNSF RAILWAY COMPANY *

STATEMENT OF CLAIM:

Claim for the denial of the discipline claim of Illinois-Wisconsin Seniority District (Aurora) Conductor P.R. Anthony and our request for removal of censure from his personal record and pay for all time lost (10-day record suspension) as the result of an investigation held on December 15, 2015.

FINDINGS

Claimant P. R. Anthony was charged with being unavailable four any days, which exceeded his allotment of three 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 28, 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 April 22, 2016. The Carrier denied the claim on August 16, 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 Brandon Sundberg, 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:

1. Each employee’s compliance will be measured on a “rolling” three-month basis to better accommodate periods of intermittent illness. Each month is calculated independently and then combined to determine the threshold for the three-month period. The three-month rolling basis applies regardless if the employee has been in active service for the full three months.

2. Employees in 5-day assigned service (includes 05/02 extra boards) have a maximum threshold of one day per month. Employees in 6-day assigned service have a maximum threshold of two weekdays and one weekend day each month; however, employees in 6-day assignments that work five days a week with one RSIA day and one rest day have a maximum threshold of one day per month.

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. Sundberg testified that the Claimant was an assigned employee for the entire three months, which means that he had 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 three unavailable weekdays and one any day weekend, but he laid off for four days.

Mr. Sundberg stated 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, 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. He testified that he worked a regular assignment for the three-month rolling period, and that his assignment began at 22:30. He stated that he had car trouble on the way to work on September 5, 2015, and that he called the crew caller to notify her that he would not make it to work. Claimant stated the crew caller told him that he would be marked as layoff on call.

The Organization disputes that the Claimant had a fair hearing. The Organization argues that car trouble is beyond the Claimant's control. It points out that the Claimant called the terminal and did not layoff, but was laid off by the crew caller. The Organization asserts that the manager did not consider all the relevant information. 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 guidelines and rules. The Claimant acknowledged that he was aware of the guidelines and 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

Dated April 6, 2018