

PUBLIC LAW BOARD NO. 7254

**PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim in behalf of Wishram, WA Conductor B. M. Inhofer for immediate return to service, pay for all time lost, including attending investigation, and complete record clearance of the entire incident, account dismissed on October 11, 2007, for alleged violation of GCOR Rules 1.6 and 1.13 (dishonesty and misuse of lay off code NGD during the months of December 2006, January 2007, February 2007, March 2007, April 2007 and June 2007 when you laid off National Guard Duty 13 week days and 7 weekend days and for your failure to provide supporting information by required date of August 31, 2007, as instructed per letters from Trainmaster Ward Angelo dated July 10, 2007 and August 7, 2007, respectively, while working as Conductor in Wishram, Washington. (UTU File: DISP INHOFER 10/11/07; Carrier File: 53-08-0002)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The Carrier, being supportive of employees who perform military reserve service as part of the national defense system has a lay off code identified as "NGD" (National Guard Duty) so that such employees can lay off when needed for their military reserve service and not have those days count against its Attendance Policy.

In this respect, Claimant, who was first employed by the Carrier as a Trainman on July 18, 2005, laid off 20 days in the period December 2006 through June 2007, listing such time off as NGD for military reserve purposes as a member of the Naval Reserve. Because the Carrier found Claimant's use of the NGD code to be rather unusual, e.g., all but two of the layoffs being of an immediate nature, with only two preapproved, it had Claimant report for a conference with Trainmaster Angelos on July 9, 2007. At this meeting, Claimant was instructed that there was a need he provide documentation in support of his NGD lay off dates for reserve service.

Claimant sought to substantiate the lay off dates with presentation of copy of a calendar on which he marked the dates that he asserted were training dates for his Naval Reserve unit. Claimant also presented copy of a document headed, "Navy Operational Support Center Whidbey Island, Drill Schedule." This document listed for the months September 2006 to July 2007 what Claimant said were individual reserve units as scheduled for drills or training over two-day periods of time. Claimant circled a reserve unit identified as "CVN PAC" on each of the months, December through July, offering this the dates on which his particular reserve unit was scheduled for training.

Trainmaster Angelos explained to Claimant that this documentation was not sufficient, and instructed Claimant to provide more specific support, such as his military earnings statement or other official documentation.

On July 10, 2007, Trainmaster Angelos dispatched a letter to Claimant to confirm their conference. There having been a delay in delivery of this letter to Claimant, a second letter issued under date of August 7, 2007. The first two paragraphs of this letter read the same as was set forth in the July 10, 2007 letter, with a third paragraph added to extend a required date of delivery for the documents. The August 7, 2007 letter to Claimant thus reads in full as follows:

Pursuant to our discussion on July 9, 2007, you are being required to provide me with a "LEAVE AND EARNINGS STATEMENT" or an official letter from your commander with the United States Navy Reserve, that substantiates your absences in the months of December 2006, January, February, March, April, and June of 2007 when you laid off code NGD (national guard duty). The required document(s) must be delivered to me no later than July 31, 2007.

Failure to comply with these instructions by the required date could result in disciplinary action.

THE REQUIRED DOCUMENTS MUST BE DELIVERED TO TRAINMASTER WARD ANGELOS NO LATER THAN AUGUST 31, 2007. THIS DATE HAS BEEN EXTENDED TO ALLOW YOU TO ATTAIN THE REEQUIRED DOCUMENTS.

Although Claimant provided some support to justify an absence for January 31, 2007, he did not provide any documentation for the balance of time he had laid off under code NGD. Further, Claimant admitted that some of the dates he had laid off were not in fact for military reserve duty.

Claimant was thereafter directed to report for an investigative hearing, with the charge reading in part here pertinent:

[For] the purpose of ascertaining the facts and determining responsibility, if any, in connection with your alleged dishonesty and misuse of lay off code NGD during the months of December 2006, January 2007, February 2007, March 2007, April 2007 and June 2007 when you laid off National Guard Duty 13 weekdays and 7 weekend days and for your failure to provide supporting information by required date of August 31, 2007, as instructed per letters . . .

Following the company hearing, which was held on September 28, 2007, Claimant was notified by letter of October 11, 2007 that he was determined to be guilty as charged and that he was thereby dismissed from service effective that same date for violation of General Code of Operating Rules 1.6, Conduct, and 1.13, Reporting and Complying with Instructions.

It is the position of the Organization that as a relatively new employee Claimant did not understand the way in which the NGD code was to be used in connection with his service in the Naval Reserve. The Organization also asserts that Claimant was experiencing personal problems in going through a divorce while working out of Wishram, Washington, with his spouse and children living some distance away in Spokane, Washington. This latter circumstance it was offered also prevented Claimant from performing service or responding to calls on certain dates that, in turn, resulted in Claimant having an unfortunately bad discipline record.

As concerns the matter of a failure on the part of Claimant to present supportive documentation, the Organization argues that it had asked for, but was denied benefit of a recess or postponement of the company hearing so as to have permitted Claimant the opportunity to retrieve official documents from the Naval Reserve Center at the Whidbey Island Naval Yard,

In this latter regard, the Board concurs with the Carrier that Claimant had been given adequate time to secure and produce evidentiary documentation in support of his use of the lay off code NGD both before and after the initial notice of investigation.

As hereinbefore stated, prior to Claimant's attendance at the company hearing he had been counseled and formally instructed that he need provide evidentiary documentation in support of his NGD layoffs. The notice of investigation advised Claimant that the hearing was related to such matter. Moreover, Claimant had benefit of two postponements of the hearing in which to have obtained evidentiary documentation. Certainly, Clamant knew or should have known it would be necessary he present supporting documentation without any further delay.

In regard to the assessment of discipline, the Carrier says notwithstanding the offense at issue justifies dismissal as a stand alone infraction for failure to comply with instructions and dishonesty, that prior to issuing discipline it reviewed Claimant's personal record, and that this is Claimant's sixth rule violation within 12 months, a circumstance justifying dismissal under its established Policy for Employee Performance Accountability.

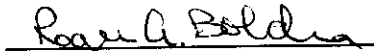
It being evident in study of the record that Claimant was clearly abusing or acting dishonestly in his use of the NGD code for lay offs, the Board finds no basis to conclude that Claimant's dismissal from service was arbitrary or an abuse of Carrier discretion. The claim to reinstate Claimant to service will, therefore, be denied as lacking merit or agreement support of record.

AWARD:

Claim denied.



Robert E. Peterson
Chair & Neutral Member



Roger A. Boldra
Carrier Member



Jay L. Schollmeyer
Organization Member

Fort Worth, TX

Dated: 11-17-09