

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14021
Docket No. 13902
10-2-NRAB-00002-090015**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (
(International Brotherhood of Electrical Workers
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 40 in particular, representatives of the BNSF Railway Company unjustly and arbitrarily dismissed from its service Commerce, California Mechanical Department Electrician Steven Coleman.**
- 2. That accordingly, the BNSF Railway Company be required to return to service Commerce, California Mechanical Department Electrician Steven Coleman and that he be made whole for all lost wages, rights, benefits, and privileges, which were adversely affected by the assessed discipline, all in accord with Rule 40 of the controlling Agreement.”**

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

According to the record before the Board, on May 21, 2008, Claimant Coleman had been asked to jumpstart Locomotive BNSF 2430 located on Track 4811 with battery power from BNSF 1035 located on Track 4812. It is undisputed that in the process of doing so, he used a set of short jumper cables between the two engines without first establishing blue flag protection on Unit 1035 to alert crews that he was working on Track 4812 or establishing derail protection on both the east and west ends of Track 4812 to prevent entry by other locomotives.

D. Lazaro and T. Teutsch thereafter reported to Track 4812 for a job that involved the movement of locomotives on Track 4812. They moved three locomotives onto Track 4812, unaware that the Claimant was working from BNSF 1035. As Teutsch stood between BNSF 7537 and BNSF 4830 on Track 4812 connecting multiple units cables, BNSF 4830 suddenly moved approximately three inches after the Claimant ran BNSF 1035 up to throttle notch three, causing it and all locomotives to which it was attached to lurch forward. Teutsch jumped out from between the units, avoiding injury, and reported the matter to his Supervisor.

By notice dated May 28, 2009, the Claimant was directed to attend a formal Investigation on June 16 in connection with charges of failure to establish proper blue flag protection in possible violation of Rule S-24.2 BLUE SIGNAL PROTECTION OF WORKMEN and M-10, BLUE SIGNAL of the BNSF Mechanical Safety Rules and Policies in effect April 15, 2005, revised May 13, 2008. The Hearing was ultimately conducted on July 8, 2008. By letter dated July 29, 2008 the Carrier advised the Claimant of his dismissal from service. This claim ensued. Following handling in the usual fashion on the property, the matter was advanced to the Board for final and binding determination.

Rule S-24.2 BLUE SIGNAL PROTECTION FOR WORKMEN reads, in pertinent part, as follows:

“B. How to Provide Protection.

A derail capable of restricting access to the track where work will occur must be locked in derailing position with an effective locking device...

C. In addition to providing protection as required ‘On a Main Track’ and ‘on Other than a Main Track,’ when workmen are on, under, or between an engine or rolling equipment coupled to an engine:

- 1. A blue signal must be attached to the controlling engine.**
- 2. A blue signal must be visible to the engineer or employee controlling the engine.**
- 3. The engine must not be moved.”**

Evidence adduced at the Investigation establishes the violations with which the Claimant was charged. Indeed, aside from some early testimony regarding a phone conversation with Teutsch, the Claimant was forthright in admitting that the derail at the east end of Track 4812 was not up and locked, nor was blue signal protection and identification attached to BNSF 1035 while he was working on it. Accordingly, the only serious issue before the Board centers on the severity of the discipline assessed by the Carrier.

The Rules implicated by the Claimant’s actions are basic and critical to rail safety. The record suggests that they appear not only in the Carrier’s “Seven Safety Absolutes” policy discussed regularly with employees, but also in its Rule Book which employees are required to have available for reference when questions arise. The Claimant does not dispute either of those facts, nor does he deny that this situation could have resulted in serious injury. Notwithstanding, standing alone this single incident of failure to comply with Safety Rules may not have warranted dismissal. It does not, however, stand alone. In October 2007, the Claimant was assessed a 30-day record suspension and one year’s probation for failure to provide blue signal protection while assigned as an Electrician working on several locomotives on Track 4807. Based upon those aggravating circumstances, the Board concurs with the Carrier that dismissal cannot be considered arbitrary or excessive. Accordingly, the instant claim is denied.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of May 2010.