

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14060  
Docket No. 13925  
13-2-NRAB-00002-130014

The Second Division consisted of the regular members and in addition Referee Lynette A. Ross when award was rendered.

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

**STATEMENT OF CLAIM:**

- “1. That in violation of the governing Agreement, Rule 35 in particular, the BNSF Railway Company arbitrarily and unjustly dismissed Electrician Robert S. Wilson as a result of an investigation held on April 6, 2010.
2. That accordingly, and as a result of this arbitrary, unjust and excessive discipline assessed Electrician Robert S. Wilson, the Carrier be ordered to return Electrician Wilson to service immediately, and further to make Electrician Wilson whole for all lost wages, rights, benefits and privileges which have been adversely affected as a result of the dismissal from service.
3. That accordingly, all record of this matter be removed from Electrician Robert S. Wilson’s personal file.”

**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.

The instant case involves Electrician Robert Wilson's dismissal on April 23, 2010, for theft of company property (fuel) while employed at the Carrier's diesel shop facility in Cherokee Yard, Tulsa, Oklahoma. At the time of his dismissal, the Claimant had been working an exempt position of Mechanical Foreman while retaining his IBEW seniority.

On February 24, 2010, the Carrier informed the Claimant that he was suspended from his exempt position as a result of recent events that had called into question his leadership abilities as a Mechanical Foreman. On March 10, 2010, the Carrier terminated the Claimant from his exempt position for reason of his theft of company fuel, in violation of BNSF's Code of Conduct. That letter also served to inform him that he could exercise his IBEW seniority pursuant to the terms of the governing Agreement, and that if he elected to do so, a formal Investigation would be convened to determine his responsibility, if any, regarding his alleged theft of company fuel. The Claimant was also told that the Carrier was willing to accept his resignation.

Upon receipt of the March 10, 2010 letter terminating his exempt employment, the Claimant notified the Carrier that he desired to exercise his IBEW seniority. On that same date, the Carrier issued the Claimant a Notice of Investigation regarding his alleged theft of company property (fuel) during the months of January and February 2010 while employed in Cherokee Yard. After postponement by mutual agreement, the Investigation was conducted on April 6, 2010. By letter dated April 23, 2010, the Carrier informed the Claimant that the testimony and evidence brought forth during the Investigation proved his violation of Rule S-28.6, Conduct, of the governing Mechanical Safety Rules and Policies. The Claimant was dismissed from service for misconduct consisting of theft and dishonesty.

The Organization promptly appealed the Carrier's disciplinary action and the parties ultimately conducted an on-property conference regarding the matter. The parties were unable to resolve the dispute. The case is now properly before the Board for final and binding adjudication on the merits.

The Board carefully reviewed the record. We find substantial evidence in support of the charge and the Claimant's violation of Rule S-28.6. During the Investigation, testimony and documents were submitted, including a written statement provided by the Claimant to Special Agent D. Kisling, confirming that during the review period of January through February 2010, the Claimant had used his own truck to drive throughout the yard and had fueled it using company fuel. His statement also shows that he again fueled his own truck with company fuel when he again was driving his truck instead of a company vehicle while on duty as a Mechanical Foreman because his driver's license had been suspended.

Testimony developed on the record by General Foreman D. Luft established that during work hours at the Cherokee Yard diesel facility, employees are not required to use their personal vehicles during their work day to move about the facility. He testified that a company truck or rental truck is always on hand for employee use, and that Kubota utility vehicles and a Honda ATV are also available for transportation throughout the facility. Luft testified that when an employee must use his or her personal vehicle during the course of business, the employee is monetarily reimbursed based on the effective IRS mileage rate pursuant to BNSF policies on which the Claimant had been trained. A copy of a 2008 expense report processed by the Carrier on behalf of the Claimant shows that he had been compensated for mileage requested for the authorized use of his personal vehicle when attending a staff meeting for business purposes.

At the Investigation, the Claimant testified that he had been "wrong for not getting permission to use the gas in [his] personal vehicle," admitted that he had "went about it the wrong way," and stated that he "was wrong in doing so." The record further reflects that as a result of a separate Investigation, the Claimant accepted a Level S 30-day record suspension, with a three-year probation period, for operating a company vehicle without a valid driver's license during the same time period, January through February 2010.

As to the quantum of discipline assessed by the Carrier, the Board finds that given the totality of the facts and circumstances, the Carrier's dismissal action was justified. The Carrier need not continue to employ individuals whose dishonesty has been proven, regardless of their seniority. The Board finds no mitigating

circumstances justifying any reduction of the discipline assessed, and there is no evidence that the Claimant's dismissal was arbitrary, unjust or unreasonable. Therefore, the claim is denied.

**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 26th day of November 2013.