

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14061
Docket No. 13928
13-2-NRAB-00002-130015**

The Second Division consisted of the regular members and in addition Referee Lynette A. Ross 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 25 in particular, the BNSF Railway Company, as a result of an unfair and unwarranted investigation conducted on August 27, 2010 at Alliance, Nebraska, unjustly and arbitrarily dismissed Telecommunication Department Electrician Wade L. Burnham from its service following more than thirty-two (32) years of BNSF Railway service.**
- 2. Accordingly, the BNSF Railway Company must be ordered to immediately return Telecommunication Department Electrician Wade L. Burnham to its service.**
- 3. That the BNSF Railway Company be ordered to make Telecommunication Department Electrician Wade L. Burnham whole for all wage loss, vacation, seniority and any other rights, including contractual benefits.**
- 4. That all record of this matter be expunged from Telecommunication Department Electrician Wade L. Burnham’s personal record. All of these demands are in accord with Rule 25, Paragraph G 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.

The instant case involves Telecom Maintainer Wade Burnham's dismissal on September 14, 2010, for failing to use a steering wheel cover while the boom and outriggers were deployed on the company truck that he was using to load handholes¹ onto the bed of the truck while on duty near Milepost .08 at South Yards, in Alliance, Kansas. The Claimant had approximately 33 years of service at the time of his dismissal.

On July 1, 2010, the Claimant's supervisor, BNSF Consultant System Engineer S. T. Wall, proceeded to the Claimant's location in order to conduct an operations test. Upon his arrival, he observed the Claimant standing on the boom truck, operating the boom, with the outriggers deployed. Engineering Instruction 15.5, Vehicles Equipped With Cranes, requires that the operator of the truck apply a cover supplied by the Carrier over the steering wheel as a reminder to personnel that the truck should not be operated with the boom and outriggers engaged. Printed on the cover is a message reminding the operator to stow the boom and outriggers before operating the vehicle.

There is no dispute that when Wall approached the vehicle, the cover was not attached to the steering wheel as required. According to Wall, as he approached the truck, he observed the Claimant get down from operating the boom, set out his safety

¹ It is the Board's understanding that a handhole is a vault-like box typically constructed of pre-cast polymer concrete, and that handholes are typically used for the containment of underground electrical cables.

cones, enter the driver's side door of the truck's cab, and, after some maneuvering, dig between the seats in order to obtain something. According to the Claimant, he had initially applied the steering wheel cover. However, when setting out the safety cones, he noticed that the cover had fallen off. The Claimant maintained that the cover must have blown off or fallen off as a result of vibrations to the truck while he was operating the boom, and that Wall had simply observed him re-attaching the cover to the steering wheel, in compliance with the Carrier's Safety Rules.

On July 2, 2010, the Carrier issued the Claimant a Notice of Investigation regarding his alleged failure to use the steering wheel cover while the boom and outriggers were deployed on vehicle 16937 on July 1, 2010. After postponement by mutual agreement, the Investigation was conducted on August 27, 2010. By letter dated September 14, 2010, the Carrier informed the Claimant that the testimony and evidence brought forth during the Investigation established his violation of Engineering Instruction 15.5, as well as Maintenance-of-Way Operating Rules 1.1.1 and 1.3.1, requiring employees to maintain a safe course and to observe and be familiar with all Safety Rules. The disciplinary notice further specified that the Carrier had considered the Claimant's personnel record prior to assessing the discipline of dismissal.

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 extensive record. We find substantial evidence in support of the charge and the Claimant's violation of the above-cited Rules. Conducting Officer D. J. Smith, who presided over the investigation, ultimately deemed the testimony of Consultant System Engineer Wall as more credible than the Claimant's testimony. The Board finds that the record amply supports Smith's determinations, particularly with regard to her decision to assign greater weight to Wall's testimony concerning his observations of the Claimant's actions and behavior as opposed to the Claimant's implausible and unconvincing testimony that the cover had fallen off or was blown off, and that Wall had actually witnessed him replacing the cover in compliance with the governing Safety Rules.

Once the Board has determined that there is substantial evidence in the record to support the charge proven at the Investigation, we must next address the question of the appropriateness of the discipline assessed. The Board will not disturb the Carrier's imposition of discipline unless we find that the Carrier's actions were arbitrary, capricious, or harsh.

The Board holds that the Claimant's dismissal was warranted. Although the Claimant's tenure with the Carrier and his seniority with the Organization were significant at the time of the incident, the Board finds they do not serve to mitigate the discipline assessed. The Board recognizes that the Carrier considers the instant incident as a stand-alone Rule violation under its disciplinary policy. However, notwithstanding its position, and as stated in the disciplinary notice, the Carrier ultimately afforded consideration to the Claimant's personnel record, which, we find, was not unblemished at the time.

Indeed, a review of the Claimant's record shows two assessments of progressive discipline in 2006 and 2008 for Rule violations resulting from motor vehicle incidents. Moreover, the Claimant's record indicates that in 1984 and 1990, he was dismissed from service and subsequently reinstated. Given the nature of the instant misconduct coupled with the Claimant's prior record, the Board finds no reason to disturb the discipline assessed. Therefore, we rule that the instant claim must be 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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of November 2013.