

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 14065  
Docket No. 13944  
14-2-NRAB-00002-120015

The Second Division consisted of the regular members and in addition Referee James E. Conway 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 40 in particular, the BNSF Railway Company arbitrarily and unjustly dismissed Kansas City, Kansas Mechanical Department Electrician José Villasenor from its service as a result of an unfair investigation conducted on March 9, 2011.
2. That accordingly, and as a result of the arbitrary, unjust and excessive discipline assessed Electrician José Villasenor, the BNSF Railway Company be ordered to return Electrician Villasenor to service immediately and further compensate Electrician Villasenor for all lost wages, rights, benefits and privileges which have been adversely affected as a result of the dismissal, and further, all record of this matter be removed from Electrician José Villasenor’s personal record.”

**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.

Hired on September 29, 2008, Claimant José Villasenor, a BNSF Electrician at Kansas City, Kansas, was dismissed on March 23, 2011, on grounds of negligent work performance resulting in a derailment on February 16, 2011. At the time of the incident, the Claimant was subject to a 36-month review period as a result of discipline assessed on March 11, 2010, for earlier unsafe conduct.

The transcript developed at the Claimant's formal Investigation held on March 9, 2011, indicates that on the night of the triggering incident, the Claimant had been assigned to serve as ground man in moving locomotive BNSF 697 to track 527 at the Diesel Shop. As such, it was his responsibility to protect the point of the movement. The locomotive operator was six-year Electrician Daniel Dister. At about 11:35 P.M., it is undisputed that the Claimant signaled Dister to proceed into Track 527, mistakenly identifying an amber signal controlling Track 528 as the signal for Track 527. The derail for Track 527, however, was in the derailing position, and when Dister proceeded to move the locomotive into Track 527 as directed, it ran over the derail, with the Nos. 5 and 6 axels going onto the ground.

The Claimant was forthright in admitting that he gave Electrician Dister the signal to proceed into the track, explaining that he misidentified the amber signal on Track 528 as the signal for Track 527. "I know," he testified, "that when I saw the West 527 signal, I was in fact seeing the West 528 signal. I must have gotten turned around and mistook one signal for the other." By way of further elaboration, he contends that the manner in which the tracks curve away from the West 528 switch "give the illusion that the West 528 signal is the West 527 signal."

The photographs received in evidence at the Claimant's Hearing lend little support to his assertions. Exhibit 6 of those materials clearly depicts a blue light on the right side of the curve for Track 527 and an amber light some distance away on the left side of the curve for the Track 528 signal. Additionally, and inconsistent with his explanation, the contemporaneously taken photos show nothing obstructing his view, as he alleged. Under the circumstances presented, it appears difficult to ascribe the Claimant's actions in giving an improper signal for movement in terms other than failure to remain alert and attentive, as the Carrier charged.

The Carrier's Policy for Performance Accountability (PEPA) provides for possible termination for a second Level "S" serious Rule violation within a 36-month period. While the policy does not mandate dismissal, in this instance the Claimant's failure to correctly observe the appropriate signal clearly offended one of the Mechanical Department's most important Safety Rules, just as his prior conduct had done one year earlier when he inappropriately removed blue signal protection. In view of the record in its entirety, the Board finds that the Claimant's dismissal was both in keeping with its PEPA policy for progressive discipline and not arbitrary or excessive. Accordingly, 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.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division**

Dated at Chicago, Illinois, this 22nd day of January 2014.