

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14069  
Docket No. 13957  
14-2-NRAB-00002-130001

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 disciplined Kansas City, Kansas, Mechanical Department Electrician Jeremy D. Clark as a result of an unfair investigation conducted on May 21, 2011.
2. That accordingly, and as a result of the arbitrary, unjust and excessive discipline assessed Electrician Jeremy D. Clark, the BNSF Railway Company be ordered to restore all wages, rights, benefits and privileges denied him as a result of the discipline issued. In addition, all record of investigation and discipline assessed to be removed from Electrician Jeremy D. Clark’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.

After holding a formal Investigation on May 21, 2011, and reviewing the record there compiled, the Carrier determined that Claimant Jeremy D. Clark was responsible for the negligent and inattentive performance of his duties in controlling the operation of a movement on April 17, 2011. The 10-day record suspension and 12-month review period assessed as a result was appealed by the Organization, handled on the property up to and including the Carrier's highest designated officer, and when it remained unresolved after conferencing, it was progressed to the Board for final resolution. For the reasons set forth below, the Board will deny the claim.

On the date of the incident according to the record, the Claimant was assigned to serve as Locomotive Operator in taking a consist of three BNSF locomotives into Track 18 at the Argentine Diesel Shop. Occupying lead locomotive BNSF 7625, the Claimant was to be assisted by Machinist Steven Elliot as ground man. During the shoving movement, BNSF 7625 was equipped with an electronic brake system, but the two locomotives coupled to it, BNSF 7518 and BNSF 7294, did not have functioning air brakes at that time.

According to the statement of Foreman James Dunkin, after being briefed by their immediate supervisor, the Claimant and Machinist Elliot attempted to spot the locomotives at approximately 6:00 A.M., but the Claimant failed to control the speed of the movement, and ran the locomotives into the backstop guard for Track 18. In the written statements prepared by both men immediately following the incident, Machinist Elliot indicated that he had given a stop signal within one-half the distance required to stop - approximately 20 feet from the bumper - which the Claimant saw, and he did not believe that he could have done anything to prevent the collision.

The Claimant, on the other hand, conceded that Machinist Elliot "... gave me an adequate stop signal," but that when he went to reach for the brakes, "... they started to apply then we hit the bumper." In response to the question, "Could you have done anything to prevent this from happening?" the Claimant replied, "Yes, probably went slower."

The Organization's case does not persuasively address those realities, and the testimony of Foreman Dunkin, Machinist Elliot and the Claimant was never discredited. Accordingly, as did the Carrier's Hearing Officer, the Board concludes that the Claimant, who was responsible for controlling the speed of his locomotive consist, was solely responsible for the accident by failing to apply full brake pressure early enough after receiving a timely signal from his ground man, and as a result, he failed to stop the movement in time. The Carrier's post-accident preliminary investigation reinforces that conclusion. According to Foreman Dunkin, blood/alcohol tests on both men were negative, and air tests and other inspections ruled out mechanical issues.

The Claimant lost no income as a result of the discipline assessed, and the review period imposed has since expired with no further incidents reflected on his service record. In light of those facts, and given that the assessed discipline was entirely consistent with the Carrier's PEPA policy, the Board is unable to find the discipline excessive or unwarranted as argued by the Organization. For those reasons, the 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.