

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14072
Docket No. 13964
14-2-NRAB-00002-130010

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 controlling Agreement, Rule 35 in particular, the BNSF Railway Company, as a result of an unfair and unwarranted investigation held on March 15, 2012 at Glendive, Montana, unjustly and arbitrarily assessed Mechanical Department Electrician Bradley G. Egeness the ultimate discipline of being dismissed from employment of the BNSF Railway Company.
2. Accordingly, the BNSF Railway Company be ordered to promptly return Electrician Bradley G. Egeness to its service and to make him whole for any and all lost wages, rights, benefits and privileges which were adversely affected as a result of the unjust assessment of discipline and that all record of this matter be expunged from his personal record, all in accordance with the terms of Rule 35 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.

On February 11, 2012, Claimant Bradley G. Egeness was observed around 7:30 P.M. aboard BNSF 9477, where he had been assigned to perform an outbound inspection, without having placed blue flag protection on the unit in violation of Rule S-24.2. - Blue Signal Protection of Workmen. By letter dated February 17, 2012, he was directed to report for a formal Investigation ultimately held on March 15, 2012. Following its evaluation of the evidence adduced at that Hearing, on April 2, 2012, the Carrier notified the Claimant that he had been found guilty as charged and terminated him. At the time of his dismissal, the Claimant had approximately four years' service with BNSF.

The Hearing transcript developed at the Claimant's formal Investigation leaves little room for questioning the Carrier's finding that on the day of the triggering incident, the Claimant had been on BNSF 9477 without protection for purposes of performing an outbound check, although he disputes that conclusion, insisting that he had been making a "visual observation." The record reflects, however, that his reliance had been placed on a version of the Blue Signal Rule subsequently modified. Under the applicable governing Rule, because the Claimant was not moving or repositioning the unit, whether or not he was conducting a "visual observation" is immaterial. The introductory paragraph to the Rule in effect on the claim date (Mechanical Safety Rule 24.2 - Blue Signal Protection of Workmen) reads as follows:

"This rule outlines the requirements for protecting railroad workmen who are on locomotives for purposes other than moving or repositioning the locomotive; or who are inspecting, testing, repairing, and servicing rolling equipment. In particular, because these tasks require the workmen to work on, under, or between rolling equipment, workmen are exposed to potential injury from moving equipment. . . ."

The Claimant freely admits that he applied no blue light to locomotive BNSF 9477 as required for nighttime operation under the Carrier's Rule. The Organization argues on his behalf that the degree of discipline imposed was unwarranted and excessive. Under the Carrier's Policy for Employee Performance

Accountability (PEPA), however, the Claimant had been assessed two additional disciplinary actions within the prior two years, the second of which was a Level "S" 30-day record suspension with a three-year review period assessed only one month previously.

While the Board fully appreciates the argument that the Carrier's PEPA policy permits but does not require dismissal under the circumstances presented, when judged against the standards restraining the Board's appellate review, it cannot be said that the dismissal of a relatively short-tenured employee for one of the more serious Safety Rules on the property while still on probation as a consequence of earlier discipline was arbitrary or excessive. Accordingly, 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.