

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 14073
Docket No. 13965
14-2-NRAB-00002-130011

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

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

STATEMENT OF CLAIM:

- “1. That in violation of the governing Agreement, Rule 35 in particular, the Burlington Northern Santa Fe Railway Company, as a result of an investigation held on September 25, 2012 at the Foreman’s office in Tulsa, Oklahoma, Electrician Charles Thompson was issued excessive and arbitrary discipline, dismissed from service.
2. That, accordingly, the Burlington Northern Santa Fe Railway Company be ordered to promptly make Electrician Charles Thompson whole for all lost wages, rights, benefits and privileges which were adversely affected as a result of the investigation and unjust assessment of discipline, and further that all record of this matter be expunged from his personal record, all in accordance with the terms of Rule 35, 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.

Following his second Level "S" serious safety violation within a one-year period, Claimant Charles Thompson was dismissed from service on September 17 following an Investigation conducted on September 5, 2012. For the reasons that follow, the Board will uphold the termination.

The facts giving rise to the claim, centering on an alleged blue signal violation in the Cherokee Yard, located in Tulsa, Oklahoma, on August 28, 2012, are not in serious dispute. On the morning of that date while working on a seven-unit consist identified as M-ALTTUL1-26A on Service Track No. 2, Electrician Thompson removed his ID tag from the blue signal protecting the train and sat inside BNSF 4626 waiting for it to be moved without ever checking the east end of the track to determine if it was properly lined against their movement. Those salient facts were confirmed at the Claimant's formal Investigation:

"RUDY JARAMILLO, JR: Then you went on to say, you took your tag off, but then you went back to the unit to await movement, correct?

CLAIMANT THOMPSON: Correct.

RUDY JARAMILLO, JR: Okay, did you go down to the east end and verify that the track was actually lined and locked away to insure that you had blue signal protections?

CLAIMANT THOMPSON: Uh, no, as, as John, as I said before, I couldn't see that far. I didn't go down there, because there were other workers. I assumed that it was because I saw the flag."

In the same exchange, the Claimant concedes that (1) he had been trained on the applicable Rules governing blue flag protection; (2) reaffirmed that he did not check to see if his track was locked and lined for his protection, but assumed that it was because he could see other workers on Service Track No. 2; and (3) admitted that, "I should have yelled down there and asked them," or walked down and verified that the track was actually lined and locked.

In the Claimant's defense, the Organization asserts among other arguments that Claimant Thompson had been the victim of disparate treatment by BNSF, because the discipline assessed him was more severe than that imposed on others similarly situated, including his co-worker on the date in question, Machinist John McCabe, who received a Level "S" 30-day record suspension. That argument, however, fails to take account of record evidence establishing that Machinist McCabe had no active discipline on his record at the time, whereas the Claimant had been assessed a prior Level "S" violation within the past year, which was still active at the time. On that basis, the disparate treatment argument fails.

Similarly, the Board finds unpersuasive the contention that the Claimant was denied the fair and impartial Hearing guaranteed by the parties' Agreement because his removal from service prior to the formal Investigation should be taken as evidence of prejudgment. The Mechanical Department Safety Rule S-24.2 - Blue Signal Protection of Workmen is a critical work Rule, with violations always considered by BNSF as serious. Absent contrary Agreement terms, the withholding from service of employees charged with serious Rule violations is well established by ample arbitral precedent. Given that reality, and because the Carrier's handling of the Claimant's removal from service and subsequent issuance of notices and conduct of the Investigation was procedurally regular in all respects, including the absence of serious mishandling by the Carrier's Hearing Officer, the Board finds that the Carrier complied with the applicable Agreement terms in assuring the Claimant contractual due process.

As the Carrier emphasizes, Claimant Thompson was discharged for what was quite obviously a second Level "S" serious violation under its PEPA policy. Based on the record before the Board, it cannot be said that the dismissal was arbitrary or capricious. Accordingly, the claim must be denied.

AWARD

Claim denied.

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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.