

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14097
Docket No. 13973
14-2-NRAB-00002-140003

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, unjustly and excessively disciplined Kansas City, Kansas, Mechanical Department Shop Extension Electrician Bob D. Bailey as a result of an unfair investigation conducted on July 27, 2012. Electrician Bob D. Bailey was assessed the ultimate penalty of dismissal from the Carrier’s service on August 9, 2012.

2. That accordingly, and as a result of the unwarranted, arbitrary, unjust and excessive discipline assessed Shop Extension Electrician Bob D. Bailey, the BNSF Railway Company be ordered to return Electrician Bailey to service immediately, to compensate Electrician Bailey for all lost wages, rights, benefits and privileges which have been adversely affected as a result of the dismissal, and further, remove all record of this matter and the discipline assessed from Shop Extension Electrician Bob D. Bailey’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.

The record indicates that following due notice to Claimant Bailey and his representatives, on July 27, 2012, the Carrier conducted a formal Investigation into assertions that he had disregarded important safety procedures while on duty on July 20, 2012. The incident under Investigation represented his second violation of a Mechanical Department "Safety Absolute" within a short period of time.¹ After reviewing the evidence adduced at that Hearing, the Carrier determined that the Claimant was responsible for not only failing to follow required procedures in working with electrical equipment, but had also been dishonest in attempting to avoid his responsibilities in that connection. On August 9, 2012, it then issued a formal notice dismissing the Claimant from service. That action was challenged by a timely claim submitted by the Organization which it advanced through claim handling on the property and progressed to the Second Division for final resolution after conferencing between the parties. Upon review of the record evidence, the Board concludes that the Claimant's termination was for just cause and denies the claim.

The Carrier takes the position that the evidence submitted adequately supports its dismissal action. Specifically, among other matters, it stresses the Claimant's own testimony during his Hearing in which he openly admits that he overlooked applying his ID tag to a locking device on an electrical panel while changing a light fixture as required by MSR 3.1.6 Lockout/Tagout (LOTO). Thereafter, the Carrier contends, as this record demonstrates, the Claimant was not honest either in discussing the matter with supervision or in his written statement addressing the incident.

The Organization argues that the Claimant was denied the fair and impartial Hearing he was entitled to by reason of the Hearing Officer's refusal to consider all testimony heard or the Claimant's appeal for leniency. With respect to the merits, it contends that the Carrier's allegations are unsupported by the facts of record and

¹ The first incident, which occurred on April 1, 2012, was addressed concurrently by the Board in Second Division Award 14093, which upheld the disciplinary suspension for that matter.

did not warrant the discipline imposed. The Claimant did, in fact, lock out the breaker for the lighting circuit he was dealing with prior to commencing work on the light fixture, although when questioned by his Supervisor, he was uncertain if he had affixed his name tag or had forgotten to do so. Accordingly, he had provided all protections required except for the name tag. His uncertainty on that detail was unfairly construed as dishonesty. In any event, neither the Claimant nor any co-worker was ever in any danger even if an oversight was demonstrated. The discipline applied was arbitrary. Lastly, the Organization alternatively argues that the Claimant should have received a less severe response and additional appropriate training.

The Board concludes that the Hearing transcript under consideration unequivocally establishes that the requirement to attach a name tag to the panel while handling live electricity is directly related to important safety considerations. Notwithstanding the Claimant's position minimizing its significance, the record evidence suggests that without a name tag, there is no practical way of identifying exactly which Electrician is performing service in the work area – which is critical in the event of an emergency – unless the Lead Man can be quickly located and account for each person assigned to him. The record further demonstrates that the Claimant had participated in a job briefing very shortly prior to this incident in which LOTO procedures were expressly reviewed.

With respect to the charge of dishonesty, the record evidence demonstrates that upon initially being asked by Supervisor Forshee about the matter, the Claimant conceded that he had not followed established procedures. Subsequently, however, in both his oral and written statements he denied having told two Carrier Officials that his Lead Man had never checked his bag. It further appears clear that the Claimant repeatedly insisted that the reason he had not affixed a name tag on the lock was because there were no LOTO kits available in the shop at the time, despite the fact that he had repeatedly asked that they be ordered. Additionally, the Claimant asserted both that he had previously experienced “consistent problems” with his Lead Man and that he suffered from a medical condition suggesting leniency was in order.

The Organization's procedural objections have been considered and rejected as not persuasive. No proof is advanced in support of the contention that bias was

demonstrated by the Hearing Officer, or that acceptance of the plea for leniency was required under the circumstances.

The merits of the dispute are also aligned against the Claimant. There is indisputable evidence here that (1) he failed to comply with serious Safety Rules, (2) the disregard shown was the second time in less than three months in which he was found responsible for a Level S offense, (3) he was still on an active review period from the first incident, and (4) this was the third disciplinary action on his record.

The neglect of critical Safety Rules was a serious matter, and the Board has no right to create exceptions by disregarding their violation. The potentially dangerous behavior here was, in turn, aggravated by the Claimant's lack of forthrightness in his responses to the charges. Graphic photographic evidence reveals there was an abundance of tags available for use in the shop, readily available to all employees, and even in the Claimant's own toolbox. While it is never pleasant to see any employee lose his or her position, upon careful review of the record in this case, the Claimant is shown to have been in violation of the Rules for which he was cited. The penalty imposed cannot be found to be arbitrary or unreasonable. Based upon those reasons, the Board must render a denial Award in this matter.

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 17th day of December 2014.