

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14100
Docket No. 13977
14-2-NRAB-00002-140008**

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:

The Organization states its claim as follows:

- “1. That in violation of the controlling Agreement, Rule 35 in particular, the BNSF Railway Company, as a result of an investigation held on September 26, 2012 at Seattle, Washington, unjustly dismissed Mechanical Department Electrician Todd M. Mercurio from its service.**
- 2. Accordingly, the BNSF Railway Company be ordered to immediately return Electrician Todd M. Mercurio to its service, make him whole for losses incurred as a result of the unjust dismissal, that all reference to this matter be removed from his personal record 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.

The record before the Board establishes that on July 25, 2012, five-year Electrician Todd M. Mercurio had been assigned to perform annual maintenance on BSNF Locomotive 345 at the Carrier's Interbay Yard in Seattle, Washington. It is undisputed that although signing off all electrical tasks on his inspection sheet as having been completed, an Electrician on the ensuing shift working the same unit observed that the traction motor brushes had not been replaced as represented on the Claimant's paperwork. Jeff Sappenfield, Foreman of Locomotives, looked into the matter and, in the course of his investigation, inspected the locomotive and verified the problem with the motor brushes. He additionally determined that many of the other tasks Mercurio had indicated were completed were in fact never accomplished.

The documentation received in evidence at the Claimant's formal Investigation on September 26, 2012, chiefly in the form of the Mechanical Tracking and Timekeeping Record (METTS), the Claimant's assignments for the second shift on July 25, the work order detail generated for the day's inspection work and contemporaneous photographs taken, show a number of items signed off as completed such as inspection and replacement of all generator slip rings, an FRA item, never completed although the Claimant had signed off on them as inspected and replaced. For his part, the Claimant conceded that he had not in fact completed all items reported as accomplished – some as a result of mistakes on his part; some because he didn't feel inspection and replacement of certain items was necessary; and in one case because he had no knowledge of how to perform the required action.

Following conclusion of the Claimant's formal Hearing on September 26, 2012, the Carrier determined that the Claimant had been dishonest in violation of Mechanical Safety Rule 28.6. Because the matter represented his third major disciplinary incident in less than one year, by letter dated October 10, 2012 he was dismissed from service.

The Organization contends in the timely claim filed on Claimant Mercurio's behalf that the transcript of the Investigation reveals a number of procedural irregularities depriving the Claimant of a fair and impartial Hearing. It further argues that because a number of the sign-off errors in question were done toward

the end of his shift, they reflected fatigue, and were simple, honest errors, not deliberate dishonesty.

Those contentions and others advanced on the Claimant's behalf have been carefully considered but must be rejected as unpersuasive. A fair and objective reading of the record compels the conclusion that in light of the evidence adduced and the Claimant's own admissions, his responsibility for dishonest reporting has been established by "more than a scintilla" of evidence, the judicial standard having application here. 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 17th day of December 2014.