

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14101  
Docket No. 13978  
14-2-NRAB-00002-140009**

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 Electrician Barry D. Hymowitz as a result of an unfair Investigation conducted on October 30, 2012. Electrician Barry D. Hymowitz was assessed the ultimate penalty of dismissal from the Carrier’s service on November 10, 2012.**
- 2. That accordingly, and as a result of the unwarranted, arbitrary, unjust and excessive discipline assessed Mechanical Department Electrician Barry D. Hymowitz, the BNSF Railway Company be ordered to return Electrician Hymowitz to service immediately, to compensate Electrician Hymowitz 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 Mechanical Department Electrician Barry D. Hymowitz’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 a formal Investigation held on October 30, 2012, Claimant Barry D. Hymowitz was dismissed from service by letter dated November 10, 2012 for violation of the Carrier's Safety Rules. That action, one of two dismissals assessed the same day for similar asserted Rule violations, is here challenged by the Organization on the Claimant's behalf.

The Claimant, with approximately seven years of service at the time, had been assigned to assist in spotting a consist of five locomotives on Diesel Service Facility Track 522 at the Argentine LMIT on October 14, 2012. The Carrier asserts that in the course of doing so, he disregarded its basic Rules S-10.2.2 – Spotting, S-24.2.7 – Flagging Multiple Locomotives, and 28.6 – Conduct. Rule 10.2.2 - Spotting generally governs proper procedures and protections relative to setting brakes and related procedures when spotting locomotives within a facility. Rule 24.2.7 – Flagging Multiple Locomotives mandates that employees apply blue signal protection to each unit while moving locomotives if they are not coupled or connected with cable or air hoses. According to the record before the Board, compliance with the blue flag Rule may be accomplished either by hanging a blue light or blue flag on the control stand, or by placing a blue tag over the throttle. Because of the serious safety implications, both Rules are considered among the Mechanical Department's seven "Safety Absolutes" as critical to a safe working environment, with either, standing alone, capable of constituting a dismissal offense.

The substantial record developed during claim handling on the property, which includes extensive testimony from all witnesses, including Foremen Dunkin and Madrigal and the Claimant, as well as relevant statements and photographs, establishes that by his own admission the Claimant failed to comply with governing Blue Signal policy on October 14, 2012. Unfortunately, it also demonstrates that the negligence charged here was the second Level S serious violation in two months. Compounding matters, this was also the Claimant's fifth disciplinary incident in six years, including violation of lockout/tag procedures and sleeping on the job.

The Board carefully considered the Organization's arguments suggesting, among other defenses, that the Carrier failed to shoulder its burden of proof and that the discipline imposed was excessive. Based upon the seriousness of the proven charges, the Carrier's demonstration of the Claimant's negligence and the significant history of previous progressive discipline, those assertions are not persuasive. In light of the aggravated circumstances presented, this 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.