

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14102
Docket No. 13979
14-2-NRAB-00002-140010

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.

In this dispute, which is a companion to Second Division Award 14101 decided concurrently, Claimant Barry D. Hymowitz is charged with the identical safety violations addressed in that matter, occurring on the same tour of duty with a second set of locomotives. Specifically, in this instance he is charged with again failing to adhere to the Carrier's Mechanical Safety Rule S-24.2.7 – Flagging Multiple Locomotives at approximately 6:40 P.M. on October 14, 2012, by leaving UP Locomotive 4779 without protection by applying a blue signal when he spotted it on Track 520. This incident occurred after the Claimant had neglected to place a blue donut on the throttle of a five-unit consist he had spotted on Track 522 approximately 20 minutes earlier. The incidents underlying both claims, observed by the same Carrier Officials inspecting locomotives on the same day, are treated by the parties as independent incidents.

In the course of the formal Investigation conducted by the Carrier on October 30, 2012, the Claimant conceded that he had twice overlooked blue flag protection in his train handling on October 14, 2012. In consequence, in view of his sixth disciplinary event in six years and his third Level S serious violation in two months, on November 10, 2012, he was dismissed after seven years of service as an Electrician.

No useful purpose is seen in recycling the text or underlying purposes of the Safety Rules violated in both instances, as set forth more fully in Award 14101. Nor does the dispute raise any factual issues; the Claimant openly accepts responsibility for twice offending the “Safety Absolute” embodied in Rule S-24.2.7, a potential termination offense even absent the discouraging past service record established by this record. He explains both incidents as judgmental lapses, which the Board fully understands. It is on that basis that the Organization pleads for reinstatement.

Under the circumstances presented, if leniency is to be extended, it is within the Carrier's purview to mitigate the penalty. Absent a showing of arbitrariness on

the part of the employer, the Board cannot properly subvert the Carrier's judgment on the level of discipline imposed.

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.