

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14105
Docket No. 13994
14-2-NRAB-00002-140025

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

(Brotherhood Railway Carmen-Division of TCU/IAMAW
PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe Railroad Company violated the terms of the current Agreement, in particular Rule 35, when on August 16, 2013, Carman Matthew Williams was issued a Level S – 30 day record suspension with a one (1) year review period for alleged failure to operate ATV 5 in a careful and safe manner on July 8, 2013.
2. That accordingly, the Carrier be ordered to remove all correspondence and record of this discipline from the Claimant’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 Claimant was assigned as a Carman at the Carrier's facility in Mandan, North Dakota, and was notified to report for a formal Investigation to determine his responsibility, if any, in connection with the following:

“. . . your alleged failure to operate ATV 5 in a careful and safe manner on July 8, 2013 while working as a Carman in the Mandan yard at approximately 16:15 hours CST.”

Following the formal Investigation, the Carrier advised the Claimant that he was being assessed a 30-day record suspension and was subject to a one-year review period commencing August 16, 2013.

The Claimant was found to be in violation of Safety Rule S-12.1.2 which requires that an employee who is crossing tracks with a motor vehicle stop before crossing the track, look for approaching trains or other on-track equipment and yield to such equipment prior to crossing the tracks. The evidence of record is undisputed that on July 8, 2013, General Foreman Snider observed the Claimant failing to stop his ATV prior to crossing Roundhouse Lead Track 2125. General Foreman Snider further testified that he approached the Claimant who admitted that he had failed to stop the vehicle prior to the crossing and that he (Snider) issued an Operations Test Report (OPT) failure to the Claimant. During the formal Investigation the Claimant admitted that he had failed to stop the vehicle prior to crossing the tracks and that he was not in compliance with Safety Rule S-12.1.2. It is also established in the record that approximately one hour prior to this incident, the Claimant had attended a safety briefing where this specific Safety Rule was discussed. Accordingly, the Board finds that the Carrier sustained its burden of proving the Claimant's guilt of the offense with which he was charged.

While not disputing the fact that the Claimant violated Safety Rule S-12.1.2, the Organization contends that it was inappropriate for the Carrier to have cited the Claimant for a formal Investigation because he was issued an OPT and was coached by General Foreman Snider on the date that the incident occurred. According to the Organization, such handling should have precluded the need for an Investigation.

The Carrier counters, however, that the OPT failure is part of a coaching and development tool to improve employees' work practices and knowledge and is not a

bar to utilizing the investigatory procedures in the Collective Bargaining Agreement for violations of Operating and Safety Rules.

The Board finds nothing in the controlling Agreement that restricted the Carrier's right to institute disciplinary proceedings against the Claimant for a suspected Safety Rule violation despite the fact that the Claimant had been issued an OPT and had discussions with the General Foreman at the time of the incident.

Relative to the discipline assessed, the Carrier notes that Safety Rule S-12.1.2 is one of the Mechanical Department's "Seven Safety Absolutes" and failure to comply constitutes a critical work practice violation. The Carrier further states that the Claimant's violation constituted a serious violation under its Policy for Performance and Accountability (PEPA) and that the policy provides for a 30-day record suspension under such circumstances. Because the Board finds that the discipline assessed in this case was neither arbitrary nor capricious, it will not be disturbed.

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.