

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14150  
Docket No. 14013  
16-2-NRAB-00002-140046

The Second Division consisted of the regular members and in addition Referee Don A. Hampton 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 35, in particular, the BNSF Railway Company arbitrarily, unjustly and excessively disciplined Havre, Montana, Mechanical Department Electrician Richard L. Svedahl as a result of an unfair Investigation conducted on January 25, 2013. Electrician Richard L Svedahl was assessed the ultimate penalty of dismissal from the Carrier’s service on February 8, 2013.
2. That accordingly, and as a result of the unwarranted, arbitrary, unjust and excessive discipline assessed Mechanical Department Electrician Richard L. Svedahl, the BNSF Railway Company be ordered to return Electrician Svedahl to service immediately, to compensate Electrician Svedahl 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 Richard L. Svedahl’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.**

**Claimant was notified by letter dated December 26, 2012:**

**“An investigation has been scheduled at 1000 hours, Thursday, January 3, 2013, at the BNSF Diesel Shop GN Conference Room, 903 1<sup>st</sup> Street, Havre, MT, 59501, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure while working as an Electrician at the BNSF Diesel Shop, Havre, Montana, to notify BNSF of your conduct leading to conviction of any felony which is prohibited. Any employee convicted of a felony must notify the proper authority of that fact within 48 hours after the employee received notice of the conviction. The date BNSF received first knowledge of this alleged violation is December 26, 2012. This is to advise RICHARD L. SVEDAHL is being withheld from service pending results of investigation.**

**You are ineligible for Alternative Handling. Contact Paul McLeod at XXX-XXX-XXXX or [XXXX@bnsf.com](mailto:XXXX@bnsf.com) with any questions regarding this investigation, or postponement. Arrange for representation and any witnesses you may desire at the investigation as provided under applicable provisions of the Labor Agreement. Please acknowledge receipt by affixing your signature in the space provided below.”**

**Investigation was held after postponement on January 25, 2013, and Claimant was notified by letter dated February 8, 2013:**

**“As a result of investigation held on January 25, 2013 at 1100 hours at BNSF Diesel Shop GN Conference Room, 903 1<sup>st</sup> Street, Havre, MT, 59501, you are hereby dismissed effective immediately from employment with the BNSF Railway Company for your conduct leading to conviction of a felony which is prohibited while working as an Electrician at BNSF Diesel Shop, Havre, Montana. It has been determined through testimony and exhibits brought forth during the**

**investigation that you were in violation of MSR S-28.6.2 Notification of Felony Convictions.**

**In assessing discipline, consideration was given to your personnel record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).**

**Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative. This letter will be placed in your personnel record. Your signing below serves as receipt and acknowledgment of your dismissal. Please arrange to return all Company property and/or Amtrak transportation passes in your possession. A check will be issued for any monies owed you. Please return signed copy of this letter.”**

**The Claimant, a career employee with approximately 14-plus years of service, was dismissed for violation of MSR S-28.6.2 (Notification of Felony Convictions).**

**The Carrier notes the credibility issues raised during the Investigation, and states Second Division Award 13749 held.**

**“It is well established the responsibility for determining credibility rests with the Hearing Officer unless there is substantial evidence that the conclusions arrived at are erroneous or biased.”**

**This decision between the same parties should be the standard applied to this case. The Carrier argues that the record totally supports the Carrier’s assessment of discipline, and that the discipline assessed is appropriate. The Organization argues that the Carrier has not met its burden of proof, and that the Carrier conducted an unfair Investigation. The Carrier, based on incomplete facts, was in error when assessing this arbitrary and unjust dismissal.**

**The Board initially notes that the record before the Board does not indicate any Fatal denial of the Claimant’s due process rights. The Board is of the opinion that the Carrier was aware, in detail, the process the Claimant was going through. It would appear the Claimant was making efforts to keep Railroad Management**

aware as he progressed through the Judicial System. The Carrier most surely was aware that the charges against the Claimant were of a felonious nature.

The Board is well aware that the Claimant was unfamiliar with the Judicial process, and the Board is of the opinion that he was making efforts to comply with the terms of the Controlling Agreement. The Board is unconvinced that the Claimant's career is unsalvageable. We will order that the Claimant be returned to service with seniority intact, but will not be paid for time lost. The Claimant would be well advised to use this opportunity to prove to the Carrier that he can again become a valuable or trusted employee.

**AWARD**

Claim sustained in accordance with the findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division**

Dated at Chicago, Illinois, this 20th day of December 2016.