

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14151  
Docket No. 14014  
16-2-NRAB-00002-140047

The Second Division consisted of the regular members and in addition Referee Don A. Hampton when award was rendered.

**PARTIES TO DISPUTE:** (International Brotherhood of Electrical Workers  
(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 Topeka, Kansas, Mechanical Department Electrician James J. Zahourek as a result of an unfair investigation conducted on February 19, 2013. Electrician James J. Zahourek was assessed a Level S 30 Day Record Suspension with a One (1) Year Review period commencing on March 5, 2013.
2. That accordingly, and as a result of the unwarranted, arbitrary, unjust and excessive discipline assessed Mechanical Department Electrician James J. Zahourek, the BNSF Railway Company be ordered to remove all record of this matter and the discipline assessed from Electrician James J. Zahourek’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 February 1, 2013:**

**“An investigation has been scheduled at 1300 hours, Wednesday, February 13, 2013, at the South Conference Room, Superintendent’s Office, 100 NE Jefferson Trafficway, Topeka, KS, 66607, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged conduct on January 21, 2013, where damage was caused to a crane component when working on crane TM # 7 in Building 15 at the TSMT Facility.**

**This investigation will determine possible violation of MSR 28.6 Conduct. You are ineligible for Alternative Handling. Contact Ronald Wylie at XXX-XXX-XXXX or [XXXX@bnsf.com](mailto:XXXX@bnsf.com) with any questions regarding this investigation, postponement, waiver, and if applicable, alternative handling.**

**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 February 19, 2013, and the Claimant was notified by letter dated March 5, 2013:**

**“As a result of investigation held on February 19, 2013 at 1300 hours at South Conference Room, Superintendent’s Office, 100 NE Jefferson Trafficway, Topeka, KS, 66607 you are hereby assessed a Level S 30 Day Record Suspension for your conduct on January 21, 2013, where damage was caused to a crane component when working on crane TM 7 in Building 15 at the TSMT Facility.**

**In addition, you are being assessed a One (1) Year Review Period that commences on March 5, 2013. Any rules violation during this review period could result in further disciplinary action.**

**It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MSR 28.6 Conduct. 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. Please return signed copy of this letter.”**

**The Organization argues the Claimant, a senior employee of the Carrier, was disciplined after an unfair and heavily biased Investigation. The Claimant was operating a forklift when damage was caused to a crane component while working on crane TM #7 in Building 15 at the TSMT Facility.**

**The Organization also argues that the Claimant was not in violation of the rule, and that he was predestined for failure by being assigned a task he was untrained on, but in which he had requested training.**

**The Carrier notes that it is undisputed by the record that the Claimant is an experienced forklift operator, and has attended multiple training and refresher courses on the operation of such types of equipment. The Claimant has been operating forklifts for nearly 15 years.**

**The Board, after careful review of the entire record, does not find any violations of the Claimant’s due process rights. In the instant case, it appears that the Claimant, in his desire to accomplish the task in a timely manner, fashioned a remedy that unfortunately did not work and ultimately caused an accident, and damage to Carrier property. Fortunately, there were no injuries sustained.**

**The Board would commend the Claimant for his zeal to complete the task at hand. The Claimant however, with his long service should have realized that in a**

safety sensitive industry, safety should always take precedent. The solution in this case was not well planned, discussed, and was obviously not a safe way to complete the task.

The Carrier has, through substantial evidence met their burden of proof, and the Claim will 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 20th day of December 2016.