

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14152
Docket No. 14029
16-2-NRAB-00002-140065

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 and unjustly disciplined Kansas City, Kansas, Mechanical Department Electrician Terrance J. Jones as a result of an unfair investigation conducted on February 14, 2013. Electrician Terrance J. Jones was assessed a Level S 30 Day Record Suspension with a Three (3) Year Review Period commencing on January 31, 2013.
2. That accordingly, and as a result of the unwarranted, arbitrary, and unjust discipline assessed Mechanical Department Electrician Terrance J. Jones, the BNSF Railway Company be ordered to remove all record of this matter and the discipline assessed from Electrician Terrance J. Jones’ 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 7, 2013:

“An investigation has been scheduled at 0830 hours, Thursday, February 14, 2013, at the Office of the Shop Superintendent, 2201 Argentine Blvd., Second Floor, Kansas City, KS, 66106, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged violation on work date of January 30th, 2013, actual date of January 31st, 2013, at approximately 7:15am, you were allegedly discourteous during a conversation with Supervisor Greg Slagle. Additionally, you were allegedly negligent when you failed to sign off your completed work on the BNSF 5031.

This investigation will determine possible violation of MSR 28.6 Conduct section 2, Negligent, section 7, Discourteous. You are ineligible for Alternative Handling.

Contact Mark Stockman at XXX-XXX-XXXX or 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 on February 14, 2013, and Claimant was notified by letter dated February 26, 2013:

“As a result of investigation held on Thursday, February 14, 2013 at 0830 hours at Office of the Shop Superintendent, 2201 Argentine Blvd.,

Second Floor, Kansas City, KS, 66106 you are hereby assessed a Level S 30 Day Record Suspension for your violation on work date of January 30th, 2013, actual date January 31st, 2013, at approximately 7:15am, you were discourteous during a conversation with Supervisor Greg Slagle. Additionally, you were negligent when you failed to sign off your completed work on the BNSF 5031.

In addition, you are being assessed a Three (3) Year Review Period that commences on January 31, 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 section 2, Negligent, section 7, Discourteous.

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 Claimant was assessed a Level S 30 Day Record Suspension with a Three Year Review Period. The Claimant is a fairly short service employee.

The Organization argues that the discipline assessed the Claimant was not justified and was a clear violation of the Governing Agreement. The Organization contends that the Carrier’s Investigation did not disclose facts that support the Carrier’s allegation nor warrant the discipline assessed. The Claimant’s inadvertent error was not intended to be harmful or detrimental to the Carrier or its operation.

The Organization also explains that the Claimant’s attitude and actions were misunderstood by his Supervisor, and the claim should be sustained in its entirety.

The Carrier notes the record does not indicate an unfair or biased Investigation. The Claimant himself testified that the investigation had been

conducted in a fair and impartial manner. The Carrier further notes the Claimant signed off on an AC Locomotive, and not a DC Locomotive, which is different and requires un-similar duties. The Carrier also notes that the Claimant in a relatively short length of service has been disciplined on multiple occasions.

The Board in its review of the record does not reveal any denial of the Claimant's due process rights. As the Carrier has met its burden of proof, the discipline assessed, especially with the Claimant's less than stellar record, is not inappropriate, and 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 20th day of December 2016.