

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14153
Docket No. 14030
16-2-NRAB-00002-140066**

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, as a result of an investigation held on April 26, 2013 in Chicago, Illinois, issued Electrician Jose L. (Luis) Vizcaino excessive and arbitrary discipline. Mr. Vizcaino, a long term employee, was issued the ultimate discipline of dismissal from BNSF Railway service.**
- 2. That accordingly, the BNSF Railroad Company be ordered to promptly return Electrician Jose L. Vizcaino to its service and that he be made whole for all lost wages, rights, benefits and privileges which were adversely affected as a result of the investigation and unjust assessment of discipline, and further that all record of this matter be expunged from his personal record, all in accordance with the terms of Rule 40, Paragraph (i) of the Controlling Agreement.”**

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 March 13, 2013:

“An investigation has been scheduled at 0900 hours, Thursday, March 21, 2013, at the Corwith Terminal Building 2nd Floor Conference Room, 3611 West 38th Street, Chicago, IL, 60632, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to comply with instructions pertaining to locomotive movement, while working as an electrician and laborer respectively at the Corwith DSF on March 12, 2013 at approximately 0900 hours, when you left BNSF 6939 in foul of a track, then moved BNSF 6744 & BNSF 6920 south through the service track, stopped short to determine close clearance with BNSF 6939, you then continued movement, sideswiping the BNSF 6939 with the BNSF 6744 resulting in damage to the handrails on both units.

This investigation will determine possible violation of MSR 10.2.1 Moving, MSR 10.16 Leaving Equipment in the Clear, and MSR 28.13 Reporting & Complying with Instructions.

JOSE L. VIZCAINO (XXXX) is ineligible for Alternative Handling because the charge involves alleged violation of rules associated with BNSF’s Critical Work Practices.

SHANNON KIRKLAND (XXXX) is ineligible for Alternative Handling because the charge involves alleged violation of rules associated with BNSF’s Critical Work Practices.

Contact Jack Frank 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 after postponement on April 26, 2013, and Claimant was notified by letter dated May 17, 2013:

“As a result of investigation held on April 26, 2013 at 1000 hours at the Corwith Terminal Building 2nd Floor Conference Room, 3611 West 38th Street, Chicago, IL, 60632 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for failure to comply with instruction pertaining to locomotive movement, while working as an electrician at the Corwith DSF on March, 12, 2013 at approximately 0900 hours, when you left BNSF 6939 in foul of a track, then moved BNSF 6744 & BNSF 6920 south through the service track, stopped short to determine close clearance with BNSF 6939, you then continued movement, sideswiping the BNSF 6939 with the BNSF 6744 resulting in damage to the handrails on both units.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MSR 10.16 Leaving Equipment in the Clear, MSR 10.2.1 Moving, and MSR 28.13 Reporting & Complying with Instructions.

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 has approximately 20 years of service with the Carrier. The Organization argues that the dismissal was unwarranted and severe considering the Claimant’s long term service.

The Carrier notes that the Claimant was indeed a long service employee that his discipline record was less than stellar, and he had committed two violations regarding seven safety absolutes within a year.

The Board has reviewed in detail the record before us, and is well aware of the Claimant’s years of service. We are also well aware that in such a safety sensitive industry, lack of attention to detail can result in property damage, injury, or worse. It is sad to see a career ending this way; however, the Carrier has met their burden of proof. As we have not found any violations of the Claimant’s due process rights, 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.