

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14158  
Docket No. 14061  
16-2-NRAB-00002-150025**

**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 Controlling Agreement, Rule 40, in particular, the BNSF Railway Company arbitrarily, unjustly and excessively disciplined Kansas City, Kansas, Mechanical Department Electrician Michael A. Eicher as a result of an unfair investigation conducted on February 3, 2014. On February 19, 2014, Electrician Michael A. Eicher was assessed a Level S 30 Day Record Suspension with a Three (3) Year Review Period commencing on February 19, 2014.**
- 2. That accordingly, and as a result of the unwarranted, arbitrary, unjust and excessive discipline assessed Mechanical Department Electrician Michael A. Eicher, the BNSF Railway Company be ordered to remove all record of this matter and the discipline assessed from Electrician Michael A. Eicher’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 January 27, 2014:

“An investigation has been scheduled at 0900 hours, Monday, February 3, 2014, at the Office of the Shop Superintendent, 2201 Argentine Blvd., Kansas City, KS, 66106, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged violation on January 5, 2014, as part of a move crew, while moving the locomotive, BNSF 8131 to the outbound tracks, you allegedly failed to sweep/clear the West 529 track switch points, which were allegedly fouled with snow, causing the locomotive BNSF 8131 to derail.

This investigation will determine possible violation of MSR 13.7 Operating Switches and Derails and MSR 13.7.1 Checking for Damage and Obstructions. In connection with this alleged violation, MICHAEL S. WARREN (1734029) is ineligible for alternative handling under Part II, Section I D(e) of the Safety Agreement.

Contact Mark Stockman at XXX-XXX-XXXX or [XXXX@bnsf.com](mailto:XXXX@bnsf.com) with any questions regarding this investigation, postponement or waiver. 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 3, 2014, and Claimant was notified by letter dated February 19, 2014:

**“As a result of investigation held on Monday, February 3, 2014 at 0900 hours at the Office of Shop Superintendent, 2201 Argentine Blvd., Kansas City, KS, 66106 you are hereby assessed a Level S 30 Day Record Suspension for your violation on January 5, 2014, as part of a move crew, while moving the locomotive, BNSF 8131 to the outbound tracks, you failed to sweep/clear the West 529 track switch points, which were fouled with snow, causing the locomotive BNSF 8131 to derail.**

**In addition, you are being assessed a Three (3) Year Review Period that commences on February 19, 2014. 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 13.7 Operation Switches and Derails and MSR 13.7.1 Checking for Damage and Obstructions.**

**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.”**

**The Claimant was disciplined with a Level S 30 Day Record Suspension for allegedly violating MSR 13.7 and MSR 13.7.1. This charge was in connection with regards to an incident on January 5, 2014 in which BNSF 8131 was derailed.**

**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 has not met their burden of proof that the discipline assessed was excessive and should be removed in its entirety.**

The Carrier notes that the Investigation conducted on February 3, 2014, was conducted in a fair and impartial manner. The Carrier contends that photographs and testimony support the Carrier's conclusions, that the Claimant did not clean the ice and snow from the switch in question.

The Board has carefully reviewed the record before us, and initially note we did not discover any violation of the Claimant's due process rights.

While there was conflicting testimony during the Investigation, legions of Awards in this industry have held that credibility issues are to be resolved by the Hearing Officer, and not Boards such as this one.

The Board's review reveals that the Carrier has, with substantial evidence, met their burden of proof. As this is the case, 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.