

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14172
Docket No. 14052
16-2-NRAB-00002-150016**

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood Railway Carmen-Division of TCU/IAMAW
(The BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe Railroad Company violated the terms of our current agreement, in particular Rule 35, when they arbitrarily dismissed Memphis, TN Carmen Patrick Alday, as a result of an investigation held on March 13, 2014.**
- 2. That, accordingly, the Burlington Northern Santa Fe Railroad Company be required to compensate Patrick Alday eight (8) hours pay at the pro-rata rate for each workday he is withheld from service, commencing March 28, 2014, and continuing until he is returned to active duty. Additionally, we are claiming the following:**
 - 1. Returned to service with seniority rights unimpaired;**
 - 2. Made whole for all vacation rights;**
 - 3. Made whole for all health, welfare and insurance benefits;**
 - 4. Made whole for pension benefits including railroad retirement and unemployment insurance;**
 - 5. Made whole for any other benefits he would have earned during the time he is out of service;**
 - 6. Made whole for all wages, lump sum payments, general wage increases and cost-of-living adjustments;**
 - 7. Paid for any overtime hours that he may have lost during his dismissal;**

8. All correspondence and record of the investigation be removed from his personal record and file.”

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 employed as a Carmen at the Carrier's Memphis, Tennessee train yard and repair track facility. On February 25, 2014, a Mechanical Foreman for the Carrier reported observing the Claimant and a co-worker having failed to establish blue signal protection as required by Mechanical Safety Rules while they were performing their work. As a result, the Claimant and his coworker were summoned to the Foreman's office and directed to provide written statements explaining the observed blue flag rule violation. The Claimant, however, supplied the Foreman a written statement stating only: "On 2/25/14 my statement is I have nothing to say on this situation."

Accordingly, on February 25, 2014 the Carrier gave the Claimant written notice of an Investigation, scheduled for March 5, 2014, "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged misconduct and failure to furnish information as instructed by your supervisor, during an investigation of an alleged rule violation at approximately 00:10 on Tuesday, February 25, 2014. . ." The Investigation eventually took place on March 13, 2014, with the Claimant and a Union representative present. On March 28, 2014, the Carrier informed the Claimant that he was dismissed from

employment for violating Rules S-28.6 (Conduct) and S-28.2.7 (Furnishing Information).

The Claim asserts that the dismissal of the Claimant was improper because the Claimant was not given a fair and impartial Investigation, as required by Rule 35. Rule 35 provides, in pertinent part:

“Rule 35. (a) An employee who has been in service more than sixty (60) days, or whose application has been formally approved, shall not be disciplined without a fair hearing by designated officer of the Carrier. . . At a reasonable time prior to the hearing such employee and his duly authorized representative will be apprised in writing of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. . .”

The record establishes, and it is not contested, that the Grievant was given an Investigative Hearing, before an officer of the Carrier, with his representative present, on March 13, 2014. In addition, about a week before that hearing, the Claimant was informed in writing that the charge against him involved the alleged violation of Carrier Rule S-28.2.7 (Furnishing Information).

Rule S-28.2.7 states:

“Employees must not withhold information, or fail to give all the facts to those authorized to receive information regarding unusual events, accidents, personal injuries, or rule violations.”

At the Investigative Hearing on March 13, 2014, the Claimant acknowledged having been directed by his Foreman on February 25, 2014 to provide a written statement concerning the facts surrounding his alleged failure to establish blue signal protection on that date. The Claimant also acknowledged that, in response to that direction from his Foreman, the Claimant provided only the written statement asserting that he had “nothing to say on [the] situation.”

The Claimant further acknowledged that, by so stating, the Claimant “didn’t answer anything that happened as to the [alleged blue signal] rules violation.”

When asked at the Investigative Hearing whether he agreed that his refusal to provide any facts to his Foreman about the Rules violation constituted a violation of Rule S-28.2.7, the Claimant answered that it depended on “how the rule is perceived, its open to perception in my opinion.”

In the opinion of the Board, it is not a matter of perception whether Rule S-28.2.7 requires an employee, when asked by a duly authorized official of the Carrier such as the employee’s Foreman, to provide information known to the employee concerning an alleged “rule violation.” The Rule explicitly so requires. The record indicates that the Claimant refused to provide such information on February 25, 2014, despite having been directed to do so. The record further indicates that the Carrier conducted a fair Investigation into that refusal by the Claimant, eliciting what in effect was an admission by the Claimant, and that therefore the dismissal of the Claimant was not in violation of Rule 35.

Accordingly, the Board finds that the discipline was not unjustly or improperly issued to the Claimant, and that the Claim must 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.