

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14188  
Docket No. 14065  
17-2-NRAB-00002-150045

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood Railway Carmen-Division of TCU-IAMAW  
(BNSF Railway Company)

**STATEMENT OF CLAIM:**

- “1. That the BNSF Railway Company (hereinafter referred to as the Carrier) did knowingly, willfully and intentionally violate the contractual rights of Carman Chris B. Limas (hereinafter referred to as the Claimant) when it dismissed the Claimant from employment and indicated he was in violation of Reporting and Complying with Instructions, Conduct and Safety Rules. Carrier failed to conduct a proper ‘fair and impartial’ investigation as provided by Rule 40 of the ATSF Agreement, as amended, and issued dismissal contradictory to the testimony and evidence provided therein.
2. That Carrier shall be require to reinstated the Claimant to the service of the BNSF and make the Claimant whole for all lost compensation and benefits he would have been entitled as an active employee and expunge his record and file of all reference to this improper dismissal.”

**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.

The Claimant was dismissed from the Carrier's service following a formal Investigation in connection with the following:

“...your alleged failure to comply with instructions from Trainmaster Tyler Labelle at approximately 0125 hours, May 23, 2014, at Riverbank, California to inspect cars for Train M Moodbar 1-23a.”

At the formal Investigation, Trainmaster Labelle testified that at 1:25 AM, he contacted the Claimant and instructed him be at Modesto in approximately 30 minutes to perform a mechanical inspection on a train. The Trainmaster stated that at 3:12 AM, the Conductor of the train advised that the Claimant had not arrived to inspect the train and the Conductor stated that he had got tired of waiting and had completed the inspection himself. Mr. Labelle then stated that he went to the office in search of the Claimant but the door was locked; so he knocked on the door, at which point the Claimant answered the door. According to the Trainmaster, the office was dark, with the lights and the computer turned off and that the Claimant was not wearing his work boots or other footwear. The Trainmaster told the Claimant that he no longer had to go to Modesto since the crew had performed its own inspection and the train had already departed the terminal. Trainmaster Labelle also provided a contemporaneous log of his activities on the subject date, which coincided with his testimony regarding his interactions with the Claimant.

When the Claimant testified at the Investigation, he acknowledged that he did not perform the inspection but stated that he had first received the instructions from the Trainmaster at 2:51 AM, almost 1 ½ hours later than testified to by Trainmaster Labelle. Also, the Claimant denied that he was in the locked office without boots when the Trainmaster told him that the train had departed. Rather the Claimant testified

that he had gotten the necessary equipment and was on his way to inspect the train when the Trainmaster approached him and advised that the train had departed and also stated that the conversation had taken place in a common area. The Claimant characterized the situation as a cancellation of instructions a short time after they were given at a time when he was fully prepared to go to Modesto and perform the mechanical inspection.

There is obviously a conflict in testimony. This Board has held in a plethora of awards that when there is a conflict in testimony that the Carrier, as the trier of facts is in the best position to resolve such conflict, and that this Board, in its appellate capacity, should not upset such finding absent a clear showing of prejudicial conduct by the Carrier. There is no such showing in this case. The Board finds that the evidence of record supports the Carrier's findings that the Claimant was guilty of failing to comply with instructions as charged.

The Organization has contended that the Carrier violated Rule 40 of the controlling Agreement by failing to provide a copy of the transcript of the investigation along with the notice of discipline but rather the Carrier sent the transcript more than a week later. Contrariwise, the Carrier posits that the Organization failed to present evidence to support this contention and also submits that the Organization presented no evidence to show that it was unable to properly file a timely and complete appeal. The Board initially notes that Rule 40(G) does not set forth a specific time limit for providing the transcript but states that the transcript will be furnished "within a reasonable time." The Board finds that a review of the entire record leads to the conclusion that the Organization was able to file a timely appeal and to set forth its position relative to the disciplinary action taken herein.

Relative to the discipline assessed in this case, the Carrier notes that the Claimant's violation constituted a serious offense in accordance with its Policy for Employee Performance Accountability (PEPA), and points out that such Policy provides that an employee may be dismissed for a second serious violation within the applicable review period. The Carrier presented documentation establishing that this was the Claimant's third serious offense during the review period, one of which also involved failure to comply with instructions. The Organization argues that the discipline assessed was arbitrary, capricious and unjust.

Based upon its review of the record, the Board finds that the discipline assessed was in accord with the Carrier's PEPA and was not excessive or arbitrary. Accordingly, the Board will not disturb the discipline of dismissal assessed in the present case.

**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 15th day of December 2017.