

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14191
Docket No. 14074
17-2-NRAB-00002-150054**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani 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, unjustly and excessively disciplined Kansas City, Kansas, Mechanical Department Electrician Brian J. Sells as a result of an unfair investigation conducted on May 20, 2014. Electrician Brian J. Sells was assessed the ultimate penalty of dismissal from the Carrier’s service on May 27, 2014.

2. That accordingly, and as a result of the unwarranted, arbitrary, unjust and excessive discipline assessed Mechanical Department Electrician Brian J. Sells, the BNSF Railway Company be ordered to return Electrician Brian J. Sells to service immediately, to compensate Electrician Sells for all lost wages, rights, benefits and privileges which have been adversely affected as a result of the dismissal, and further, remove all record of this matter and the discipline assessed from Mechanical Department Electrician Brian J. Sells’ 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.

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

"...your alleged dishonesty when questioned by Supervisor Josh Sanders, concerning your job assignment on April 29th, 2014, while working as an Electrician at the Argentine LMIT."

The following is a summary of Assistant General Foreman Sanders' testimony relative to the events that transpired on the subject date:

- **"at 1630 hours, Sanders assigned the Claimant to unwire a turbo charger on unit 533 and then to work with Electrician Dister on engine 4695; at approximately 1700 hours, Mr. Dister was reassigned to work on engine 7751 at 23 track fall protection;**
- **at 1815 hours, Sanders testified that he saw the Claimant talking to another Electrician at the tool room and that about 10 minutes later, Sanders was advised that an Electrician was needed to discharge an AC unit; since Sanders no longer saw the Claimant at the tool room, he stated that he paged him over the PA system and around 10 minutes later began to look for the Claimant;**
- **Sanders stated that when he could not locate the Claimant, he paged him several more times; during this time, Sanders encountered Electrician Dister who indicated that perhaps the Claimant had went to 23 track fall protection;**
- **when Sanders went to 23 track fall protection, he observed two Electricians, but not the Claimant, nor did he see a blue tag on the engine with the Claimant's name, since that was a requirement if an Electrician was going to work on an engine;**
- **after Sanders returned to the top of the ramp, he paged the Claimant again and at approximately 1907 hours, the Claimant arrived at the top of the**

ramp; by this time, Foreman Card was also at the top of the ramp; when Sanders asked the Claimant where he had been during the 30 to 40 minutes that he was being paged, the Claimant, according to Sanders, stated that he was working on 23 track fall protection and that he heard the pages but that it took him some time due to some type of track obstruction;

- after assigning the Claimant another task, Sanders testified that he went to 23 track fall protection and questioned the two Electricians, both of whom told him that the Claimant had not been at that location.”

Foreman Card also testified at the investigation and corroborated Mr. Sanders’ statement that the Claimant stated that he had been working on 23 track fall protection. In addition, the three Electricians, including Dister, testified that the Claimant did not work with them on that track.

While the Claimant admitted that he did not work at 23 track fall protection, he testified that when asked of his whereabouts by supervisor Sanders, he said that he was on his way to 23 track fall protection when he heard the page and at that point went to the ramp. The Claimant insisted that he never told Messrs. Sanders and Card that he had actually worked there but that they obviously misunderstood his statement.

Upon its review of the record, the Board finds that the Carrier sustained its burden of proving that the Claimant was dishonest when questioned regarding his whereabouts on the date in question. The Board would also note that the Claimant’s testimony was often rambling and contradictory when he attempted to explain his activities on the subject date. The Board does not find that the Claimant’s explanation that there was a misunderstanding to be supported by any reliable evidence.

Relative to the discipline assessed in this case, the Carrier notes that the Claimant was dishonest in a job-related matter and that such violation constituted a “Stand-Alone Dismissible” offense under its Policy for Employee Performance Accountability (PEPA). The Carrier has cited Awards upholding the principle that dismissal is proper in cases of proven dishonesty. The Carrier also notes that at the time of this incident the Claimant was under a review period for a previous offense that also involved dishonesty. The Organization argues that, at most, this case involves a misunderstanding and 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 accordance with the Carrier's PEPA and was not excessive or arbitrary in light of the recognized seriousness of the Claimant's offense. 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.