

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 14001
Docket No. 13883
09-2-NRAB-00002-080035

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

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

- "1. That in violation of the controlling Agreement, Rule 40 in particular, the BNSF Railway Company, as a result of an unfair and unwarranted investigation held on July 12, 2007, at Barstow, California, unjustly and arbitrarily assessed Mechanical Department Electrician Brenda K. Montoya with a record suspension of 10 days and probationary period of 1 year.**
- 2. Accordingly, the BNSF Railway Company be ordered to promptly make Electrician Brenda K. Montoya whole for any and all lost wages, rights, benefits and privileges which were adversely affected as a result of the unjust assessment of discipline and that all record of this matter be expunged from Brenda K. Montoya's 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.

The Claimant was employed by the Carrier for approximately 13 years and on June 29, 2007 was assigned as an Electrician at the Mechanical Department facility at Barstow, California. On this date, the Claimant's work assignment was to perform an M06 semi-annual inspection on Electro Motive Division (EMD) Locomotive 9002. BNSF employees, such as the Claimant, occasionally perform work on EMD locomotives on a contract basis. An apprentice Electrician, A. Britt, was assisting the Claimant in this task. The EMD locomotive was subject to the inspection requirements of that company and the Claimant was required to complete an EMD inspection worksheet indicating the work that had been performed on Locomotive 9002.

Part of the work to be performed on Locomotive 9002 was an inspection of the traction motors. Item 153, paragraph A, on the inspection report states the following as one of the tasks to be performed during a traction motor inspection: "Replace brushes (Mandatory)." The Claimant and the apprentice both indicated by their signatures on the inspection report that the inspection of the traction motors, including the replacement of the brushes, had been completed. The next day, June 30, 2007, K. Frazier, an EMD representative, inspected Locomotive 9002 to check work progress. Frazier noted that the traction motor inspection cover appeared not to have been disturbed and also noted that the inspection kit assigned to that locomotive, which contained the new traction motor brushes, had not been opened.

Accordingly, the Claimant was directed to report for a formal Investigation:

" . . . for the purpose of ascertaining the facts and determining your responsibility, if any, with not changing the traction motor brushes and signing off work task Item 153 Traction Motor Inspection on EMD 9002

an M06 inspection that states "Replace Brushes (Mandatory). This was discovered June 30, 2007 by EMD supervisor Ken Frazier and may be in possible violation of Rule S-28.6 (Conduct), Rule S-28.13 (Reporting and Complying with Instructions) and Rule S-28.14 (Duty - Reporting of Absence) of the BNSF Mechanical/P&M Safety Rules and Policies, effective Sunday, April 15, 2007."

Following the Investigation, the Claimant was issued a ten day record suspension with a one year probationary period. The issue before the Board is whether the Carrier proved with substantial evidence of a credible nature that the Claimant was guilty of the charged offense and, if so, was the discipline assessed warranted for such offense.

The Board notes that the evidence adduced at the Investigation, including the Claimant's own testimony, clearly established that the mandatory requirement that the traction motor brushes on EMD Locomotive 9002 be replaced, had not been performed and that both the Claimant and the apprentice signed the inspection report indicating that the work had been completed. EMD Supervisor Frazier testified that his inspection of the locomotive on the day following the date of the Claimant's inspection, revealed that the traction motor covers on the engine appeared not to have been disturbed and that it was not possible to change the traction motor brushes (a mandatory requirement) without removing the covers. Frazier further testified that the inspection kit for the unit, which contained the replacement traction motor brushes, had not been opened. Frazier also entered into the record the inspection report for Locomotive 9002 for June 26, 2007, which was signed by the Claimant incorrectly and indicated that the traction motor brushes had been changed. The Claimant admitted at the Investigation that she had read the inspection form, that she had read that it was mandatory to change the traction motor brushes as part of the inspection and that she had signed the inspection report indicating that the brushes had been changed, despite the fact that she knew that such task had not been done by the apprentice based on her specific instructions to the apprentice.

The Claimant, while admitting these facts, defended her actions by stating that Lead Electrician J. Schwartz had advised her that it was not necessary to change the traction motor brushes if three wear lines were visible. Based on Schwartz' statement, she so instructed the apprentice and the traction motor brushes were not

changed because they fell within this tolerance. The Board notes that while Schwartz was a Leadman, he was not assigned as the Claimant's Leadman and was working at another location in the facility. Schwartz was at the Claimant's work location for the sole purpose of picking her up for a break and not in any type of work capacity. While Schwartz testified that he had given the Claimant this incorrect information relative to the traction motor brushes, he stated that this was based on his knowledge of inspection procedures on BNSF owned locomotives and that he was not familiar with the inspection procedures for EMD owned locomotives. In fact, Schwartz testified that he had never seen the EMD inspection form and was, therefore, not aware of the mandatory requirement that the traction motor brushes had to be changed as part of the M06 inspection. The Board finds that while Schwartz should not have given the advice without positively knowing the EMD inspection procedures, this is not sufficient to relieve the Claimant from her primary responsibility to insure that the brushes had been replaced. The inspection form is clear and unambiguous on this requirement. When the Claimant saw that Schwartz' advice was contrary to the form, she should have immediately sought out her supervisor if she was unsure how to proceed as opposed to signing the form indicating that the work had been done when she knew that such information was false. Furthermore, the record indicates that the Claimant made no attempt to notify supervision of this fact until the next day when she was questioned concerning this matter.

Relative to the discipline assessed in this case, the Board does not find the imposition of a ten day record suspension with a one year probationary period to be excessive in light of the nature of the Claimant's proven violation of the Carrier's Rules. Accordingly, the Board finds no reason to disturb the discipline assessed.

AWARD

Claim denied.

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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 9th day of April 2009.