

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37252
Docket No. SG-38091
04-3-03-3-535

The Third Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Burlington Northern and Santa Fe Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF):

Claim on behalf of J. R. Skorpak for reinstatement and payment of all time lost and benefits, and for all reference to this matter be removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline of dismissal on the Claimant in connection with an investigation conducted at 9:00 a.m., on September 17, 2002, in the Claimant’s absence. Carrier’s File No. 35 03 0010. General Chairman’s File No. 02-115-BNSF-154-TC. BRS File Case No. 12728-BNSF.”

FINDINGS:

The Third 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 claim alleges that the Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it failed to provide a fair and impartial Investigation. The record indicates otherwise. The Notice of Investigation with specific charges was sent registered mail. Two attempts were made to deliver the notice. Prior to the Investigation, a recess was called to allow the Claimant's representative to try to locate him. The parties made every reasonable attempt to locate the Claimant. The record indicates that the Claimant received a fair and impartial Investigation. See Second Division Awards 12682 and 13677.

The record indicates that the Claimant had received explicit instructions on items that required repair and how and when the repairs were to be performed. The repairs were not attempted. This was not the first time that the Claimant failed to comply with his Supervisor's instructions to make necessary crossing repairs. Progressive discipline and failure to explain his absence from duty led to his termination. See Public Law Board No. 6516, Award 13.

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 Third Division

Dated at Chicago, Illinois, this 27th day of October 2004.