

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37426
Docket No. SG-37811
05-3-03-3-176

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF 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 N. D. Jenniges, for payment of lost wages, including skill pay with all rights and benefits unimpaired and clear his personal record of this incident in connection with an investigation held on December 5, 2000, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it imposed harsh and excessive discipline against the Claimant without meeting the burden of proving the charges. Carrier compounded its violation by violating Rule 53A when it failed to notify the Organization within sixty (60) calendar days that the claim was being disallowed. Carrier’s File No. 35 02 0024. General Chairman’s File No. 02-028-BNSF-119-D. BRS File Case No. 12466-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.

At approximately 9:20 A.M. on November 27, 2000, Signal Supervisor G. C. Lang was informed by telephone that the Claimant had been involved in an accident while operating a Carrier vehicle in Gillette, Wyoming. Lang proceeded to the accident scene, which was being investigated by the Wyoming Highway Patrol. The Highway Patrol issued the Claimant a citation for "failure to maintain proper lane of travel." The Highway Patrol further determined that the Claimant was responsible for causing the accident.

Specifically, the truck being operated by the Claimant struck the rear of a van, causing the van to crash through a chain link fence. The Claimant's vehicle then crossed several lanes of traffic, struck two private vehicles and came to rest at a Texaco food mart. All four vehicles involved sustained extensive damage. The van driver suffered broken ribs and the Claimant's wrist was broken.

By letter dated November 28, 2000, the Claimant was directed to attend an Investigation to be held on December 5, 2000, ". . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to be alert and attentive while performing your duties and your alleged failure to work in a safe and efficient manner while driving Company Vehicle #15337 at or near the intersection of Union Chapel Road, Highway 59 and Dove Road, Gillette, Wyoming, resulting in collision and subsequent damage to BNSF Vehicle #15337 and three privately owned vehicles at approximately 0915 hours on Monday, November 27, 2000 while assigned as a Signal Maintainer headquartered at Gillette, Wyoming, on duty at 0730 hours."

In a letter dated January 18, 2001, the Carrier notified the Claimant that as a result of the December 12, 2000 Investigation ". . . you are hereby issued a Level S Thirty (30) Day Suspension for violation of Burlington Northern Santa Fe Maintenance of Way Operating Rules 1.1, 1.1.1 and 1.1.2 and BNSF MOW Safety

Rule S-12.1.1 of the BNSF Maintenance of Way Safety Rules, effective January 31, 1999.”

By undated letter, the Organization appealed the discipline, alleging that it was unwarranted. The Organization asserts that the burden of proof in a discipline matter such as this is on the Carrier and that burden has not been met. It contends that the Carrier imposed harsh and excessive discipline against the Claimant. According to the Organization, the Claimant was denied a fair and impartial Investigation in violation of Rule 54. The Organization further contends that dismissal constitutes an abuse of the Carrier’s discretion and it should now be required to compensate the Claimant for all lost wages, including skill pay, and with all rights and benefits unimpaired and clear the Claimant’s personal record of the incident.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Investigation in accordance with the requirements of the Agreement. The Carrier considers the Claimant guilty as charged. According to the Carrier, the record contains substantial evidence to support the Claimant’s culpability. The Carrier asserts that it met its burden of proof and that the discipline was appropriate based on the nature of the offense.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier’s, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier’s actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of its discretion. See Second Division Award 7325 and Third Division Award 16166.

The Board finds substantial evidence in the record to uphold the Carrier’s decision. The Carrier proved that the Claimant violated the relevant Rules. The evidence shows that the Claimant in fact failed to be alert and attentive while performing his duties and failed to work in a safe and efficient manner while driving a Carrier vehicle on November 27, 2000. Further, the Board finds that the

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Claimant received a fair and impartial Investigation. In addition, the Board concludes that the penalty imposed was appropriate and we will not overturn it.

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 22nd day of March, 2005.