

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37864
Docket No. SG-38009
06-3-03-3-441

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

- "1. Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF).
2. Claim on behalf of G. Copeland, for compensation for any and all lost wages including overtime, with all rights and benefits unimpaired and clear his personal record of any mention of this incident, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it unfairly issued excessive and unwarranted discipline against the Claimant without first meeting the burden of proving its charges as a result of an investigation held on September 4, 2002. Carrier's File No. 35 02 0069. General Chairman's File No. 02-083-BNSF-21-K. BRS File Case No. 12722-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.

On September 12, 2002 the Carrier suspended the Claimant for ten days. As a result of an Investigation held on September 4, 2002 the Carrier found that the Claimant violated M of W Safety Rule S-21.1

The facts of this case reveal that at 10:45 A.M. on August 16, 2002 the Signal Supervisor was riding a train that was traveling approximately 20 to 25 miles per hour when he observed a Signal Gang that was standing in the clear as the train passed. The Claimant, who was working with the Signal Gang, was not wearing his required protective eye wear during the 40 to 45 seconds that the gang was in the Signal Supervisor's view. All other employees on the Signal Gang were wearing their protective eye wear.

At the Investigation the Claimant admitted to the violation, but asserted that he was cleaning his glasses. However, the testimony reveals that the glasses were hanging around his neck.

It is particularly important to wear safety glasses when observing a passing train which might throw up debris.

The Carrier proved that the Claimant violated the Safety Rule.

AWARD

Claim denied.

Form 1
Page 3

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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 Third Division

Dated at Chicago, Illinois, this 1st day of August 2006.