

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41451
Docket No. SG-41611
12-3-NRAB-00003-110175

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall 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 BNSF Railway Company:

Claim on behalf of A. E. Moore, for his record to be cleared of any mention of the discipline issued in a letter dated November 24, 2009, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued the excessive discipline of a 30-day Level S record suspension with a one-year probation period without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on October 30, 2009. Carrier's File No. 35-10-0003. General Chairman's File No. 09-033-BNSF-121-T. BRS File Case No. 14436-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 October 12, 2009, the Claimant was a CTC Maintainer headquartered at Saginaw, Texas, with some 14 years of service. On that date, while backing his company vehicle out of a parking space at a local gas station, the Claimant struck another vehicle.

After several postponements, the Investigation was held on October 30, 2009. On November 24, 2009, the Claimant was assessed a 30-day Level "S" record suspension, with a one-year probation period, for his violation of Maintenance of Way (MOW) Safety Rule S-12.1.1 - General Requirements.

The Organization asserts that the failure of the Carrier to include the alleged Rule being violated in the Charge Letter is a procedural error which denies the Claimant his Agreement due process rights.

The purpose of a Notice of Investigation is to afford the Organization and the Claimant sufficient time and knowledge to know the case to be met. There is no specific language in the Collective Bargaining Agreement providing that Rules be specifically enumerated to satisfy this requirement. Parties in the industry in other agreements have bargained for clauses such as that. That is not the case here. The Board finds that the Notice of Investigation held sufficient particulars so as to allow the parties to prepare, and that, therefore, there was no procedural error.

Turning to the merits of the case, the Organization contends that the Carrier failed to meet its burden of proof. It asserts that there is no evidence to establish that the Claimant operated his vehicle in an unsafe manner. It contends the record evidence demonstrates that the Claimant's vehicle has a utility bed, which limits the visibility of the rearview mirror. It also establishes that the backup light and alarm were operational. The Claimant testified that he looked at his passenger side mirror to see if anything was on the passenger side and also checked the rearview and the driver side mirrors, but did not see anything behind him. When he started to back up, he collided with another moving vehicle that he testified "came out of nowhere."

In response, the Carrier contends that the fact that the Claimant backed his vehicle into another, which he admits, proves the Rule violation.

Cases like this turn on their specific facts. A review of the record evidence presented reveals that this is the Claimant's third vehicular accident in a company vehicle during his 14-year tenure. On the whole, the Board finds that the Carrier met its burden of proof. Accordingly, the claim is denied.

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 16th day of October 2012.