

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41515
Docket No. SG-41719
13-3-NRAB-00003-110328

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 J. A. Gratzek, for reinstatement to service with compensation for all time lost, including skill pay, with all rights and benefits unimpaired and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of dismissal against the Claimant, without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on January 21, 2010. Carrier’s File No. 35-10-0013. General Chairman’s File No. 10-009-BNSF-154-TC. BRS File Case No. 14505-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.

This 30-year employee was charged with failing to properly record the position of switches on his Authority to Occupy Track Form on December 7, 2009. After agreed-upon postponements, an Investigation was held on January 21, 2010. On February 16, 2010, the Claimant was dismissed for violating MOWOR 8.2 Position of Switches.

The essential facts in this case are not in dispute. On December 7, 2009 the Claimant was working as a Signal Maintainer. He had performed a series of tests that day in the field, including those on a switch which he threw. There is no dispute that at the time of throwing the switch, he did not record its position on his authority form. Later that day, back in the office, a Supervisor picked up the form from the Claimant's desk. The discrepancy was later noticed.

The Claimant contends that he was still working, but simply away from his desk (responding to another emergency call) when the Supervisor took the form. He asserts that he would have filled it out properly before going home that day. The Carrier counters that the Claimant's procedure was not the proper way to proceed. It contends that he should have completed the form in the field immediately after performing the test. When he failed to do so, the Carrier argues that the Claimant, at that point, committed the violation. The fact that he may or may not have completed the form some three hours later in the office is, it contends, not relevant to the violation.

The Claimant's record is not clear. He had signed a waiver which imposed a 30-day record suspension along with a 36-month probationary period on February 17, 2009. According to the Carrier's discipline policy, the February suspension was a "Level-S" infraction, as is the one now before the Board. Two "Level-S" suspensions within the probationary period may result in dismissal.

The Organization contends that there was no Rule violation and that there were no unsafe conditions. It argues that the form was taken without the Claimant's authorization. It asserts that even if there was a violation, it was minor and given the Claimant's long employment history, dismissal is overly harsh.

The Board finds that the Carrier met its burden of proof. There is a reason that forms must be filled out at the time of the work. Waiting some three hours before

completing them may result in inaccurate information being recorded, with attendant safety issues. While this may have been an inadvertent error, it is not an error without consequences. However, given this employee's very long service record, the Board finds that it is appropriate to reduce the penalty to time out of service, without compensation, and with the clock re-starting on the Claimant's three-year probationary period, as of the date of this Award.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of February 2013.