

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41521
Docket No. SG-41788
13-3-NRAB-00003-120002

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
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(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. K. Wyckoff, for payment of all lost time, employment rights restored, and his record to be cleared of any mention of the discipline issued in a letter dated May 17, 2010, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued the excessive discipline of dismissal without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on April 29, 2010. Carrier's File No. 35-10-0024. General Chairman's File No. 10-029-BNSF-87-B. BRS File Case No. 14558-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 Claimant was dismissed on May 17, 2010 for allegedly falsifying a report about maintenance on a signal system.

On April 6, 2010, the Claimant was a Signal Maintainer with some 31 years of service. On that date, he worked on a section of track in North Dakota and entered a series of inspection reports into the computerized system of the Carrier. A few days later, a Supervisor was conducting a field test and asked for certain documents regarding switch positions. The Claimant was unable to provide the documents relating to one of the switches. Nor was he able to provide a copy of the track authority which would have been required to perform the test. The Claimant initially asserted that the track authority was under another employee. Further investigation proved this to be false. A further download from a separate system showed that the switch in question had never been moved, thus confirming that the test had not been performed.

An Investigation was held on April 29, 2010. As a result of that Investigation, the Claimant was dismissed on May 17, 2010 for allegedly violating MOWOR 1.6 Conduct (dishonesty).

MOWOR 1.6 – Conduct, reads:

“Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome or
7. Discourteous

Any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be tolerated.”

The Organization first contends that the Hearing Officer was predisposed to a finding of guilt. It asserts that he allowed exhibits to be entered into the record over the objection of the Organization that were not relevant to the charge. It also argues that the Claimant made an honest mistake, not a dishonest one. It further argued that the Claimant believed he had inspected the switch on March 31 while inspecting a series in that area and later saw that it was not entered into the RailDOCS system. He added it believing that he had forgotten to put it in earlier. It was only after being given the further evidence that he remembered he had not done it. The Organization also contends that he was fatigued at the time and this fatigue contributed to his error. It asserts that he was not dishonest – merely that his recollection

“evolved” as events unfolded. Finally, it contends that dismissal of a long-service employee, in the circumstances, is excessive.¹

The Carrier counters that the Hearing was conducted in a fair and impartial manner, as evidenced by the record. It contends that the Claimant told the Carrier that he had performed the tests only three days after they were allegedly done. He then said that his track authority was under someone else. He testified at the Investigation that he had performed the test on March 31.

The Board carefully reviewed the record and finds no evidence to support the Organization’s allegation that the Claimant was not afforded a fair and impartial Investigation. With respect to dishonesty, the Board finds that there are merits to the arguments of both sides. This is a long-service employee with only one suspension on his record from some ten years ago. While the Board has little sympathy for recollections that “evolve,” it is cognizant that sometimes one forgets. While the Carrier made out its onus for discipline, this is a case which, in the view of the Board, calls out for intervention. The Claimant is therefore ordered reinstated to service without compensation.

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.

¹ There was a further preliminary argument raised by the Organization at an earlier stage in the proceedings with respect to the Carrier failing to provide certain required data in advance of the Hearing. This argument was, however, explicitly dropped by the Organization in its Submission, because the Claimant had been retained in service while the outcome was pending and had personal access to this data prior to his dismissal.