

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41684
Docket No. SG-41820
13-3-NRAB-00003-120031**

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 E. B. Rankin, for his record to be cleared of any mention of the discipline issued in a letter dated May 21, 2010, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the excessive discipline of a Level S (serious), 30-day record suspension and a probation period of one year without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on April 30, 2010. Carrier’s File No. 35-10-0026. General Chairman’s File No. 10-030-BNSF-129-S. BRS File Case No. 14559-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.

There is no dispute over the essential facts of this case. The Claimant is a 34-year employee of the Carrier and was working as a monthly rated Signal Maintainer on April 17, 2010. At 6:11 A.M. that morning, the Claimant received a call from the Signal Call Desk to notify him that a highway crossing gate on his assigned territory was not operating correctly. This call came at a time outside of his normal working hours, but, as a monthly rated employee, the Claimant was required to take the call. He did so. There is also no dispute over the words used in the call, because they are recorded. After the Call Desk attendant told him of the location to go to, he asked the Claimant for an estimated time of arrival. The Claimant said "I will get there when I get there." The Claimant then hung up the phone. As the Call Desk is required, by Rule, to obtain an estimated time of arrival, the Call Desk attendant called back. During this second call, the Claimant said, to the Call Desk attendant, "Josh, you call this phone number one more time like that when my family is sleeping and I'm going to make a trip down there. Do you understand?" The Claimant said to only call his cell phone from then on. When the Call Desk attendant asked if the Claimant wanted to change his contact information in the system, the Claimant hung up on the attendant yet again.

Based on this correspondence, the Carrier sent a Notice of Investigation in connection with an alleged violation of the Carrier's Policy HR – 90.4 and MOWOR 1.6. An Investigation was held on April 30, 2010 and the Claimant was assessed a 30-day record suspension and a one-year probationary period in a letter dated May 21, 2010.

Carrier Policy H R – 90.4, which deals with violence in the workplace, states, in relevant part:

"BNSF is committed to providing a safe, respectful workplace that is free from violence or threats of violence Individuals who engage in violent or threatening behavior may be subject to dismissal or other disciplinary action Threat of violence includes any behavior that by its very nature could be interpreted by a reasonable person as demonstrating intent to cause physical harm to another individual."

MOWOR 1.6 states:

“Conduct Employees must not be: . . . 7. Discourteous.”

The issue before the Board is the characterization of the interchange between these two employees. The Carrier says that the Claimant’s actions violated these policies. They characterize his comments as threats of violence, and, at the very least, discourteous.

The Organization takes a different view. They explain the context in which the comments arose. They say that the Claimant had only had two hours of sleep because he had been visiting a friend in the hospital. They further explained that the Claimant was frustrated because the Call Desk employee had given him blatantly incorrect information about the location he was to go to. They say that it was the intent of the Claimant to call the other employee back once he was in his company vehicle and out of range of hearing of his family, so they would not be further disturbed. They say that a reasonable person would not, in effect, view the Claimant’s frustration as a threat of workplace violence.

The Board understands that the Carrier must take any threat of workplace violence extremely seriously. Without having the ability to hear the actual tape, and therefore better understand the tone of the conversation and without the Carrier having called the other individual involved to attend the Investigation, it is difficult to truly appreciate the tenor of the conversation. Nevertheless, on an objective reading of the transcript of the conversation one reasonable interpretation is a threat of violence. Another reasonable interpretation is that someone who was simply woken from a deep sleep was frustrated. Nevertheless, it is incumbent on employees to act respectfully with each other and to not, as MOWOR 1.6 says, be discourteous. At the very least, the Carrier has proven the latter charge.

However, given this Claimant’s extremely long and discipline – clear employment record as well as the mitigating circumstances raised by the Organization, the Board finds it appropriate to reduce the quantum of discipline.

Therefore, the Board reduces the discipline to a 15-day suspension. Because the suspension was a suspension of record only, there is no need to address any issues of backpay. Finally, the Claimant is urged to be more judicious in his choice of language in the future.

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 18th day of June 2013.