

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37429
Docket No. SG-37871
05-3-03-3-251**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 Burlington Northern Santa Fe (BNSF):

Claim on behalf of R. G. Eaton, to clear his personal record of any mention of this matter, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it failed to provide a fair and impartial investigation on March 28, 2002, and issued discipline without meeting the burden of proving its charges. Carrier’s File No. 35 02 0046. General Chairman’s File No. 02-040-BNSF-119-D. BRS File Case No. 12549-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 March 5 and 6, 2002, a Federal Railroad Administration (FRA) Inspector conducted tests on a portion of the Claimant's territory in connection with a routine FRA periodic check of signal systems. Irregularities were found on at least two signal appurtenances on the Claimant's assigned territory. The irregularities consisted of a ground being present in the electrical crossing gate mechanism; when the crossing gate was in the raised position, the motor contact was touching the metal part of the cam, thus potentially diverting the electrical impulse from its intended route.

By letter dated March 8, 2002, the Claimant was directed to attend an Investigation to be held on March 20, 2002, "... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to perform required tests in conjunction with repairs made in January 2002 ... on the Casper Subdivision, while assigned as CTC Signal Maintainer at Casper, Wyoming."

The Investigation was held on March 28, 2002. In a letter dated April 22, 2002, the Carrier notified the Claimant that as a result of the Investigation, "... you are hereby issued a Level S Record Suspension of thirty (30) days for violation of Burlington Northern Santa Fe Railway Company Signal Instruction manual test procedures TP-234 and TP-107, in effect August 1, 1997, revised October 1, 2001. Additionally, you have been assigned a three (3) year review period."

By letter dated May 1, 2002, the Organization appealed the discipline, alleging that it was unwarranted. The Organization asserts that the burden of proof in a discipline matter such as this is on the Carrier and that burden has not been met. It contends that the Carrier imposed harsh and excessive discipline upon the Claimant. According to the Organization, the Carrier's decision to discipline the Claimant specifically violated Rule 54, as the Notice of Investigation failed to specify the Rules allegedly violated. Further, the Carrier precluded the Claimant and his representative from preparing a proper defense. Finally, the Organization contended that the Claimant did perform the required tests, but did not record them onto the proper form. The Organization requests that this matter be removed from his personal record.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Investigation. The Notice of Investigation clearly apprised the Claimant and his representative of the charges and reminded them of the Claimant's contractual right to arrange for the presence of any necessary witnesses. The Carrier considers the Claimant guilty as charged. According to the

Carrier, the record contains substantial evidence to support the Claimant's culpability. The Carrier asserts that the discipline was appropriate based on the nature of the offense.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of its discretion. See Second Division Award 7325 and Third Division Award 16166.

The Board finds that the Claimant received a fair and impartial Investigation. There is substantial evidence in the record to uphold the Carrier's decision. The Claimant failed to conduct appropriate tests so as to detect the presence of the grounds. The Board concludes that the discipline imposed is reasonable and we will not overturn it.

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 22nd day of March, 2005.