

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39874
Docket No. SG-40012
09-3-NRAB-00003-070216
(07-3-216)

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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 S. W. Boone, for his record to be cleared of any mention of the discipline issued in a letter dated January 20, 2006, 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 three-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 December 21, 2005. Carrier compounded this violation by failing to render a decision within the 30-day time limit provisions of Rule 54. Carrier’s File No. 35-06-0022. General Chairman’s File No. 06-009-BNSF-103-C. BRS File Case No. 13724-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 in this case was assigned to the position of CTC Signal Maintainer, headquartered at Alpha, Illinois. Following a formal Investigation, the Claimant was assessed a Level S record suspension of 30 days and a three-year probationary period for violation of Maintenance of Way Operating Rule 1.16 – Subject to Call, which provides as follows:

“Employees subject to call must indicate where they can be reached and must not be absent from their calling place without notifying those required to call them.”

On November 19, 2005, at 1:14 A.M., a problem with the signal system was reported on territory under the Claimant’s responsibility between Mile Post 8.2 and Mile Post 5.8. The Signal Call Desk created a trouble ticket to track the issue and attempted to contact the Claimant to make the repairs. There is no evidence that the Claimant had previously reported off or notified the Carrier that he was unable to respond to calls that evening.

The record shows that the Signal Call Desk called the Claimant a total of seven times between 1:19 A.M. and 2:00 A.M. before moving on to the next Signal Maintainer on the call list. Four of the calls were directed to the Claimant’s cell phone; three of the calls were directed to his home phone. The Claimant did not respond to any of the calls.

Based on these facts, the Carrier contends that there is substantial evidence to support the conclusion that the Claimant violated the Rule as charged. The Claimant absented himself from his calling place without properly notifying the

Carrier and he was properly subject to discipline. In the Carrier's view, there is no basis to overturn the discipline.

The Organization takes a different view. It argues that the Carrier failed to comply with the time limits for issuing the letter of discipline in this case. The Organization submits that the Claimant did not receive the letter of discipline until January 23, 2006, which is 33 days after the Investigation was held on December 21, 2005. Because the Carrier failed to comply with the 30-day time limit requirement set forth in Rule 54, the discipline must be rescinded, the Organization argues.

The Board has given careful consideration to the Organization's threshold argument. Rule 54 states that "a decision shall be rendered within thirty (30) calendar days following the investigation, and written notice thereof will be given the employee, with a copy to local organization's representative." The language clearly provides that the decision will be "rendered" within 30 days, not "received" within 30 days. In the instant case, the record shows that the decision was rendered and mailed on January 20, 2006. Because January 20, 2006 is within 30 days of the Investigation held on December 21, 2005, we find that the decision letter was rendered in a timely fashion.

Turning to the merits, the Organization argued that there were extenuating circumstances which prevented the Claimant from receiving the trouble call on the evening in question. The Organization asserted that there were reliability problems with the cell phone service in the area. Furthermore, the Organization contended that the Claimant would not have missed the call if the Carrier had issued him a pager.

As the record developed, however, the Claimant's own testimony provides the explanation for the missed call. He testified:

"... I went to my girlfriend's house and my cell phone on the way had lost its charge so I put it on charge in my truck, went inside, remembered that I had to go get my cell phone after it had been charged. Upon getting it I had missed a call and they'd already contacted [someone else] and I missed a call."

Based on the Claimant's own admission, it is clear that he did not respond to the trouble calls on November 19, 2005 because he was charging his cell phone, and not because of dropped calls, unreliable cell phone service or the lack of a pager. Moreover, three calls were made to the Claimant's home number, which was the other contact number he provided to the Signal Call Desk. However, as he testified, the Claimant was at his girlfriend's house. He was absent from his calling place without having notified the Carrier.

In short, the Claimant was subject to call on November 19, 2005. He did not respond to calls to either his cell phone or his home phone on that date, nor did he mark himself off as unavailable. He violated the Rule as charged and discipline was warranted. The record shows that the Claimant had, on two previous occasions, signed waivers of disciplinary investigation for failure to respond to calls. Because the discipline was not unreasonable under these circumstances, the claim will be 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 31st day of July 2009.