

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39918
Docket No. SG-40324
09-3-NRAB-00003-080120**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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:

Claim on behalf of M. Bee, for his personal record to be cleared of any mention of this matter, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it imposed the excessive discipline of a Level S, 30-day record suspension with 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 August 15, 2006. Carrier’s File No. 35-06-0040. General Chairman’s File No. 06-038-BNSF-154-TC. BRS File Case No. 13824-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 a CTC Signal Maintainer, headquartered at Willmar, Minnesota. On Friday, July 28, 2006, the Claimant's regularly assigned hours were 7:00 A.M. to 3:30 P.M. He took part in the start of shift conference call on that date and stated that his plan of work was to take part in "general maintenance." At approximately 11:00 A.M., a Maintainer was needed to respond to a trouble call. Assistant Supervisor V. Duque placed a call to the Claimant to discuss the trouble call and verify if the Claimant's truck was out of service. When she did not get an answer, she left a message and paged another employee to respond to the trouble call. Between 12:45 P.M. and 1:15 P.M., Assistant Supervisor Duque tried calling the Claimant twice more and was still unable to reach him. Shortly after 2:00 P.M., Assistant Supervisor Duque made a fourth call and left a voice message. The Claimant called back shortly thereafter explaining that he had decided to leave work early. He was informed that such a decision needed to be discussed with a supervisor ahead of time. Assistant Supervisor Duque then told the Claimant to return to work. He responded "okay," but did not return to service. At approximately 3:00 P.M., the Claimant was called to respond to another trouble call. The Claimant returned this call, stating that he was unable to respond. He then called the signal desk to inform them that he was "off call" and wired "off duty" to the IVR System.

On August 1, 2006, the Claimant was directed to attend an Investigation in connection with his alleged failure to comply with instructions. The Investigation was held, after one postponement, on August 15, 2006. Subsequently, the Claimant was found guilty of violating Rule 1.6, which prohibits insubordinate conduct. The Claimant was issued a Level S record suspension of 30 days, and a one-year probationary period.

Upon reviewing the record, the Board finds that there is substantial evidence to support the charges against the Claimant. In his testimony at the Hearing, the Claimant admitted that he did not comply with the Carrier's Rules and acted in an insubordinate manner. He stated:

“I admit that I made a mistake. I admit that I should have handled it in a different manner. On July 28, I was wrong. I was wrong and I should have contacted Ms. Duque on what I was planning on doing that afternoon.”

The record establishes that the Claimant left work, failing to call in and mark off with the call desk or his Supervisor prior to leaving work. He then compounded his initial misconduct by disregarding his Supervisor’s direct order to return to work. He was insubordinate as charged and was deserving of discipline.

Based upon the facts and circumstances presented, the Board has no basis to interfere with the discipline imposed. The Claimant was afforded a fair and impartial Investigation and no mitigating circumstances are present on this record to justify a modification of the penalty. Insubordination is a serious offense and has been found to warrant discharge for a first offense. We cannot say that the issuance of a 30-day suspension with a one-year probation period is arbitrary, capricious or unreasonable. Accordingly, this claim must 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 August 2009.