

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 41516  
Docket No. SG-41748  
13-3-NRAB-00003-110364

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 S. T. Armstrong, for any mention of this matter to be removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of a Level S 30 day suspension against the Claimant, without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on February 11, 2010. Carrier’s File No. 35-10-0016. General Chairman’s File No. 10-018-BNSF-188-SP. BRS File Case No. 14507-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.

This is a case involving a 30-day suspension for not properly using a safety device when the Claimant operated a boom truck.

The basic facts are undisputed. The Claimant was working as a Signal Maintainer and operating a boom truck on January 28, 2010. A Supervisor noticed the Claimant working in the bucket of the boom truck, with his boom and outriggers extended. When the Supervisor looked inside the boom truck, he noticed that the steering wheel cover was not in place. This cover, bright orange in color, is meant to be in place over the steering wheel prior to operating the outriggers or boom. It is intended as a memory jog so that no one drives away with anything still extended. It is common evidence that the steering wheel cover was not so affixed.

The Claimant asserts that he did put it on and that it must have blown off.

The Carrier finds this unbelievable because the cover was observed to be folded in a tight, perfect square. It finds it incredible that a cover could “blow off” into this shape.

The Carrier issued a Notice of Investigation on February 1 for an Investigation to be held on February 11, 2010. A letter assessing a 30-day Level S record suspension followed on March 5, 2010, for the Claimant’s violation of Engineering Instruction EI 15.5, which states, in relevant part:

**“15.5 Vehicles Equipped With Cranes**

See Engineering Instruction 14 Roadway Equipment, specifically section 14.10 (Cranes and Boom Trucks).

All vehicles equipped with cranes must be equipped with a standardized steering wheel cover with a message reminding the driver to stow boom and outriggers prior to travel. The truck driver

must place the cover over the steering wheel when the boom and outriggers are deployed.

The specified steering wheel cover, with the message, ‘Danger. Do Not Operate . . . . Verify Boom Stowed . . . . Verify Outriggers Stowed,’ has been assigned BNSF Item No. 362050005.” (Emphasis added)

The Organization contends that the Claimant was denied a fair and impartial Hearing because no specific Rule was mentioned in the Charge letter. It also asserts that the Carrier failed to meet its burden of proof and that the discipline assessed was overly harsh.

The Carrier’s Notice of Investigation states:

“Arrange to attend investigation at 1200 hours, Thursday, February 11, 2010, at the Signal Supervisor Office, 1310 West 11th Street, Bldg. A, Vancouver, WA, 98660, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to utilize your steering wheel cover while using your bucket on your bucket truck at MP 52.8 near the station West Stevenson on Thursday, January 28, 2010 while working as Signal Maintainer on the Fallbridge Sub in Bingen, Washington.”

The purpose of a charge letter is to give the employee, and the representative, adequate information to know what the employee is facing and so as to allow the proper preparation of a defense. It is hard to imagine a charge letter that is clearer – the employee knew the date, time, place, and sufficient specifics to know what he was being charged with. The lack of a specific Rule, absent Agreement language to the contrary, is not fatal. The Board finds no procedural defect in the charge letter.

With respect to the cover, the Organization contends that the record evidence indicates that the Claimant did install the cover, but that it blew off. However, the Claimant himself contradicts this version of events when he testified that he found it “folded up on the floor beneath the steering wheel. I grabbed it, pulling it, um, and pulled it out, opening it up . . . .” This is consistent with the testimony of the two Supervisors that the cover was folded in a neat square, as if unopened.

When considered as a whole, the Board finds that the Carrier met its burden of proof. Further, the discipline assessed is consistent with the relatively short (five-year) employment history of the Claimant. Accordingly, the 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 19th day of February 2013.