

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41685
Docket No. SG-41844
13-3-NRAB-00003-120119**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall 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 BNSF Railway Company:

Claim on behalf of T. V. Samora, for his record to be cleared of any mention of the discipline issued in a letter dated August 10, 2010, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54 when it issued the harsh and excessive discipline of a Level S (serious) 30-day record suspension with a one-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 July 14, 2010. Carrier’s File No. 35-11-0001. General Chairman’s File No. 10-036-BNSF-119-D. BRS File Case No. 14589-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 facts in this case are not at all in dispute. Instead, the discipline issued the Claimant turns on an interpretation of a Rule.

On May 5, 2010, the Claimant was operating his company – provided hy-rail vehicle while assigned as a Signal Maintainer. The Claimant contacted the Dispatcher and requested a track warrant. The Dispatcher asked the Claimant if a particular train number had gone all the way past his point of entry. The Claimant affirmed that it had. The evidence establishes that he was able to do that because he had given that same train a “roll by inspection” immediately prior to contacting the Dispatcher. The Claimant then contacted the train crew and was granted track authority behind that train. The Claimant also told the train crew to contact him before making a reverse movement.

The Claimant continued with his work for the day without incident.

Sometime later an audit was performed on the tapes of the conversation. The Carrier determined that the Claimant had violated MOWOR 6.2.1. As a result, they sent a Notice of Investigation, held the Investigation and subsequently assessed the 30-day suspension of record with a one-year probationary period to the Claimant.

The Rule in question reads as follows:

“6.2.1 Train Location

Prior to fouling the track at the location where the track will be first occupied, employees who receive authority to occupy the track after the arrival of a train or to follow a train(s) must:

- * After receiving the authority, establish direct radio contact with a crew member of the train(s).
- * Confirm the train’s identity by engine initials and number.
- * Ascertain the train(s) MP location, confirming it has passed the location where the track will be fouled or occupied.”

The Carrier says that the Claimant was required to verbally contact the train to make sure that it had passed his location. They say that this is critical because

the Rule is written so that an employee cannot be confused as to which train has passed the location he is about to occupy. The Organization says, on the other hand that this is not what the Rule says. The Rule simply says that the Claimant needed to ascertain the train location and confirmed that it had passed his location. They further point out that the Rule was subsequently amended to include the verbal requirement that the Carrier urges in this instance.

The Board finds the Organization argument quite reasonable. The plain reading of the Rule merely required that the Claimant ascertain that the train in question had passed his location. He had been standing right there. He spoke with the train crew. He did ascertain that it had passed his location because he gave them a roll by inspection. As a result, the Board finds that the Carrier failed to meet its burden of proof and the discipline cannot stand. Obviously, in the future, employees will need to follow the re-written Rule.

AWARD

Claim sustained.

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.