

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41690
Docket No. CL-41933
13-3-NRAB-00003-120266

The Third Division consisted of the regular members and in addition Referee Martin W. Fingerhut when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-13214)
that:

Carrier acted in an arbitrary, and unjust manner when on June 15, 2010, Carrier issued a record suspension of 10 days to Claimant Ryan Dupee, at Cicero, Illinois, thereby violating Rule 56 of the TCU Agreement, along with other pertinent rules and agreements not specifically stated herein.

Carrier shall now be required to remove all references of Claimant's charges, investigation and discipline assessed from Claimant's personal record.

Carrier shall further be required to compensate Claimant for any lost earnings as a result of Carrier's charges and decision.”

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.

Following a formal Investigation, the Claimant was assessed a ten-day suspension for missing a call. Safety Rule S-28.15 recites:

“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.”

At the Investigation, a Carrier witness introduced evidence of six transcribed telephone calls, all placed on April 27, 2010 - three to the Claimant's home telephone number and three to the Claimant's cell phone number. In each instance the caller stated that she was calling from the Placement Center, that it was in connection with the first shift, and that the Claimant was requested to call the Placement Center. The Claimant testified that while the telephone numbers called were his, he did not receive any of the calls although he was home at the time and was ready, willing, and able to perform service.

The basic issue before the Board with respect to the merits is whether substantial evidence was presented at the Investigation to support the Carrier's decision that the Claimant violated Rule S-28.15. Although the Claimant testified that he had not received any of the six calls made by the Placement Center, the Carrier did not act in an unreasonable or arbitrary manner when it determined to give greater weight to the evidence showing that calls had been made to the Claimant. The claim on the merits must be denied.

With respect to the level of discipline, the Claimant's past record revealed that he had previously received a ten-day suspension for violating a different provision of

Form 1
Page 3

Award No. 41690
Docket No. CL-41933
13-3-NRAB-00003-120266

Rule S-28. Under the circumstances, we do not find the ten-day suspension imposed here to be excessive.

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 16th day of September 2013.