

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42126
Docket No. SG-42267
15-3-NRAB-00003-130202**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 R. E. Evans, for the removal of all discipline imposed and his personal record cleared of any mention of this matter, account Carrier violated the current Signalmen's Agreement, particularly Rules 54 and 56, when it issued the harsh and excessive discipline of a Level S (Serious) 30-day record suspension with a three-year review period to the Claimant, without providing him a fair and impartial Investigation, and without meeting its burden of proving the charges in connection with an Investigation held on August 25, 2011. Carrier's File No. 35-12-0006. General Chairman's File No. 11-037-BNSF-188-SP. BRS File Case No. 14783-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.

On July 25, 2011, the Claimant was working as a Signaller on Gang SSCX0105 in Ellensburg, Washington. At about 8:18 A.M., the Claimant was driving the gang's boom truck on a public road when the boom, which was unsecured, rose up and struck some overhead power lines, becoming entangled in them. The Carrier conducted an Investigation, which was held August 25, 2011, and determined that the Claimant was guilty of violating Engineering Instruction (EI) 15.4 – Vehicles Equipped with Cranes, and Maintenance of Way Safety Rule (MOWSR) S-17.2.5 – Cranes and Hoists-Power Line Clearance. Pursuant to the Carrier's Policy for Employee Performance Accountability (PEPA), he was assessed a Level S 30-day record suspension, with a three-year review period to commence on September 30, 2011. The Organization filed a timely claim protesting the discipline; the Parties having been unable to resolve the dispute through their on-property grievance procedures, the matter was submitted to the Board for adjudication.

The record establishes that the Claimant had been hired by the Carrier in September 2010. He had only recently been promoted to Signaller and was relatively new to Gang SSCX0105. Apart from the Foreman, he was the only member of the gang who had a commercial driver's license (CDL), so he was assigned to operate the gang's boom truck. He had not attended a formal Crane Certification class, but had been operating the boom truck for about a month before the accident with only limited on-the-job training. Regarding his training, the Claimant testified at the Investigation:

“It was, it was fairly vague. The individual that showed me was leaving the crew. I was the only other person CDL qualified on the crew and before he left he kind of just gave me the remote, showed me some, what some of the switches did, things like that. It wasn't extensive.”

The truck was not used every day, so the Claimant had only driven the truck a few times before the accident. He testified that he wanted to get more training but had not yet requested it when the accident occurred; he had not requested any additional training on the truck's operation from his Foreman or another Supervisor. At the Hearing, the Claimant testified that he thought he had adequately secured the boom and proceeded to go through his checklist before moving the truck. When he started the truck and released the parking brake, no warning lights or buzzers sounded, from

which he concluded that everything was in order and the truck was ready to go. The boom truck is equipped with a "Stow Alarm," which is supposed to sound and alert the driver if he starts the truck without the boom being properly secured. Following the accident, it was discovered that the stow alarm was defective and did not sound when the Claimant started the truck. While the operator is supposed to check all fail-safe systems to make sure they are operative, the Claimant had never received any training in how to do that.

There is no dispute that as the operator, the Claimant was responsible for securing the boom before moving the truck anywhere and he failed to do that in this instance. However, the Board finds that the unique facts of this case present mitigating circumstances that contributed to the accident, specifically the defective stow alarm and inadequate training that left the Claimant without the knowledge of how to test the various safety systems on the truck so as to ensure that they were working properly. His failure to secure the boom did violate Carrier policies regarding the safe operation of crane trucks, and the Carrier had just cause for discipline. However, the mitigating circumstances present in this case warrant a lower level of discipline than was assessed. Accordingly, the 30-day Level S record suspension shall be reduced to a first Standard Violation under the PEPA, which is a formal reprimand with a twelve-month review period.

AWARD

Claim sustained in accordance with the Findings.

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 13th day of July 2015.