

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42403
Docket No. SG-42650
16-3-NRAB-00003-130404**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel 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 B. W. Voigt, 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 (Serious) 30-day record suspension with a one-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 March 28, 2012. Carrier’s File No. 35-12-0043. General Chairman’s File No. 12-026BNSF-121-T. BRS File Case No. 14894-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 is a Signal Maintainer headquartered at Rosenberg, TX. On the evening of February 16, 2012, at approximately 11:30 p.m., an unidentified person called, claiming the crossing arms at the Royal Lakes crossing had activated without a crossing train. The Claimant was sent to inspect. The Claimant informed his Signal Supervisor, Candice Crenshaw, that he had repaired the gate arm. However, recorder logs for the Royal Lakes crossing for February 16 and 17 showed no indication that the gate arms had been lowered nor did they show any activation at the time of the anonymous call. The Claimant was charged with violating MOWOR 1.6-Dishonesty as well as Signal Instruction 7.2-Responding to Crossing Reports.

The Carrier held a formal investigation on March 2, 2012, for the purpose of gathering evidence. Based on the evidence adduced, the Carrier concluded that the Claimant did not repair the arm as claimed. It found one hour and 56 minutes of time that could not be accounted for and assessed the Claimant the discipline here concerned. The Organization protested, which the Carrier rejected on appeal. The claim was duly processed without resolution. As a result, the Organization presented the dispute to the Board for hearing and decision.

The Carrier argues that during the investigation, the Claimant was asked if he checked the operation of the GCP 3000. It asserts there was a moment of silence. In its view, this silence constituted an admission that he did not check the components as required.

The Claimant asserted he changed the arm out. However, the Carrier notes that replacing the fiberglass piece would require lowering the arm and the records associated with the arm in question do not show that it was lowered on the day in question. Supervisor Crenshaw tested the gate on the day after the incident and found it was properly recording. She printed out the log a week later which showed a train going through at exactly the same time as the TDMS does, and the TDMS specifies the location as Royal Lakes. Based on this evidence, the Carrier concludes that the log used by Crenshaw was from Royal Lakes, and proves that the arm was not lowered. In the Carrier's assessment, the Claimant could not have and did not perform the repair in question. It maintains record evidence establishes that it had ample grounds for its finding of dishonesty.

The Organization contends the Carrier's reliance on the record log is misplaced. It notes the logs were the only evidence the Carrier had. It finds it quite suspect that Crenshaw created no logs at the time of her first visit and waited 12 days to create them. The Organization concludes the logs are unreliable and should not have been admitted as evidence. It argues that the only thing tying the records to the location in question is the title Crenshaw gave her file. It contends that recorders can fail, and Crenshaw even admitted this. The Claimant was already at Royal Lakes Crossing when the call came in. In the Organization's view, this fact alone contravenes a finding of fraud. It concludes the evidence is inadequate to establish any rules violation.

The Board can find no motivation for Crenshaw to substitute a false log. Further, the Board is not persuaded that the log should be mistrusted based on vague references to potential malfunction. There was no evidence of any malfunction at the time of the recording and Crenshaw tested it shortly after the incident. Further, the timing of the train's arrival at the crossing on the day in question is not likely to have been happenstance and substantiates the identity of the log. It follows that the Carrier was reasonable in relying on Crenshaw's record log.

Taking the evidence as a whole, the Board finds that the Carrier possessed substantial evidence that the arm was not lowered for repair. On this basis, it reasonably concluded that the Claimant reported performance of a repair that was not done. The Board considered the discipline assessed and finds it to be neither arbitrary nor excessive but consistent with PEPA under the circumstances.

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 October 2016.