

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 42405
Docket No. SG-42652
16-3-NRAB-00003-140136

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
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(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 N. A. Jones, 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 3-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 July 31, 2012. Carrier’s File No. 35-13-006. General Chairman’s File No. 12-045-BNSF-121-T. BRS File Case No. 14956-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 3, 2012, the Claimant contacted his Foreman for clarification of his location for July 4, 2012 and was advised "I guess stay put til we hear otherwise." At the time he was in Tomball, Texas. He relocated to Somerville, Texas, over 75 miles away, and reported there on July 4, 2012.

The Carrier held a formal investigation for the purpose of gathering evidence. As a result of the investigation, the Claimant was found to have violated MOWOR 1.13 Reporting and Complying with Instructions; the contested discipline issued. The Organization protested the discipline, 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 maintains the Claimant had been instructed not to work the holiday and no one authorized him to relocate to Somerville. In its view, "stay put" is a clear instruction, not reasonably interpreted as meaning to go somewhere else. Further, the Claimant texted back "K," indicating he understood and was agreeing to "stay put."

General Construction Supervisor Dwayne Tiffin testified that the Claimant was instructed the previous week that only signal forces working with a Maintenance of Way ("MOW") gang would be allowed to work the holiday. Foreman Russell Christian testified that at 9 A.M. on July 4, 2012 he received a text message from the Claimant stating he and Johnson were in Somerville prepping and scouting for the rail gang. In his statement he said: "I immediately called him to see why he thought he was supposed to be there, and the only reason I could decipher was because 'They were getting screwed out their overtime and management was messing their money.'"

The Carrier contends it is accepted practice for supervision to notify an employee when he is scheduled to work a holiday, and there is no practice of notification when an employee is not on the schedule. It asserts MOW Gang RP19 was not scheduled to work in Somerville until after the holiday so there was no reason for the Claimant to be there. In his view, the Claimant's reason for relocating was a protest that he was not receiving enough overtime.

The Organization argues Claimant was confused, and interpreted "stay put" to mean staying with the track maintenance gang. It asserts he was told to report on July 4, 2012:

"DONNIE TAMPLEN: I've got a couple questions, Mr. Peters. Uh so you told Mr. uh, Mr. Christian, you instructed Mr. Jones and Mr. Johnson to go get ice on what day?

RUSSELL T CHRISTIAN: The date of the instruction or the date to go get ice.

DONNIE TAMPLEN: Day to go get ice.

RUSSELL T CHRISTIAN: On the 4th.

DONNIE TAMPLEN: And you told them those instructions on?

RUSSELL T CHRISTIAN: The 3rd.¹

The Organization maintains the Carrier is responsible for the Claimant's confusion because it failed to notify the Claimant that he was not supposed to work the holiday. Johnson had to stay in a hotel, it notes, and testified he would not have done so had he known he was not working on July 4, 2012. The Organization asserts the Transcript reveals just how confused everyone was:

“RUSSELL T CHRISTIAN: I believe I told them just kind of go down to the yard, get ice, whatever, we'll know more in the morning.

DONNIE TAMPLEN: Okay. Uh in the morning would be July the 4th.

RUSSELL T CHRISTIAN: Yes, sir.

DONNIE TAMPLEN: And uh your text message uh stated that uh they were to stay put until you hear otherwise?

RUSSELL T CHRISTIAN: Yes, sir.

DONNIE TAMPLEN: And hear otherwise from who?

RUSSELL T CHRISTIAN: From me, until Dwayne contacts me or somebody lets them know.

DONNIE TAMPLEN: Did uh, did you try to contact Mr. Tiffin to find out what, what they, what they were supposed to do for the remainder of the week?

RUSSELL T CHRISTIAN: Yes, sir.

¹ TR 92.

DONNIE TAMPLEN: Did Mr. Tiffin uh call you back on July the 3rd?

RUSSELL T CHRISTIAN: No, sir.

DONNIE TAMPLEN: When was the first time you talked to Mr. Tiffin after that?

RUSSELL T CHRISTIAN: It was 7:30 or so July 4th morning.”

The Organization contends that even Foreman Christian was confused about the assignment and concludes it is completely unreasonable to accuse the Claimant of failure to follow instructions under the circumstances.

MOWOR 1.13 states as follows:

“1.13 Reporting and Complying with Instructions

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.”

The Organization is correct that the Claimant appears to have initially been given instructions to get ice on July 4, an instruction that would not have been given if the Claimant had July 4th off. However, the Claimant provided the Company with the following statement, quoted verbatim in pertinent part:

“Conversation for the week of fourth of July began on the Monday July 2nd with our former forman Rick Nunez. Mr. Nunez had informed Kenny Johnson and myself that after Tuesday the 3rd, Kenny and myself would continue to work the rest of the week on MOW schedual, with the understanding that we will report to Eddie quinonez to find out how we would relieve his gang for the rest of the week following the RP19 gang. After contacting mr Quinonez about joining with him and his crew, he Informed me that the plan to meet with him was changed to his knowledge and that the changes were discussed by Mr. Dwayne Tiffin and Russell christion. I contacted Russell to ask him about the changes, he informed me that to his knowledge he had no conversation with Mr. Tiffin and also to his knowledge he understood that Kenny Johnson and I were supposed to be preping for the the RP19 rail gang

on July the 4th and Thursday the 5th. Russell told me that he would contact mr. Tiffin and get down to the bottom of it. Shortly after the call with Russell, he sent a text to me saying that he could not get in touch with Mr. Tiffin and for Kenny and I to stay put until he heard otherwise. Kenny Johnson and my self reported to duty on July the 4th”

This statement makes it clear that the instruction to “stay put” followed the discussions about what he was supposed to do and resolved any confusion about leaving for ice or anything else. The timing is important. Though there had been confusion up until this point, the instruction to “stay put” was clear and was intended to resolve any controversy until such time that further instructions were given.

“Stay put” cannot reasonably be interpreted as authorizing a relocation and actually countermands any prior instruction to that effect. The Claimant ignored this clear instruction and “self-reported to duty” when it was not authorized. This indeed constituted a failure to follow instructions.

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.