

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42465  
Docket No. SG-42839  
16-3-NRAB-00003-140526**

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 C. M. Caron, Jr., for reinstatement to service with compensation for all time lost, including skill pay, with all rights and benefits unimpaired and with any mention of this matter 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 dismissal 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 April 23, 2013. Carrier's File No. 35-13-0027. General Chairman's File No. 13-013-BNSF-172-A. BRS File Case No. 15025-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.

Claimant is a Signal Maintainer who is required to perform tests and inspections on signal devices and to submit test results to the Railway Daily Operations Control System (RailDOCS). RailDOCS notifies the Maintainer when testing on identified devices comes due by way of a color coded system.

On April 1, 2013, a Signal Supervisor reviewed RailDOCS and found three switches assigned to Claimant that had not been completed prior to the March 28 due date. Claimant told him he had completed the tests but had not had time to upload the test results. Claimant then submitted results.

In order to perform inspections, Claimant is required to obtain track authority. However, Claimant had no track authority for March 28. When questioned, Claimant asserted the tests had actually been performed on March 27 under the track authority of another employee, a Track Supervisor. The Track Supervisor advised the Signal Supervisor that he did not authorize anyone to use his authority on either March 27 or March 28.

The Carrier held a formal Investigation for the purpose of gathering evidence. Claimant was found in violation of MOWOR 1.6 Conduct, SI TP 110 Signal Instruction Test Procedure, All Systems - Results of Tests and SI TP 382 Switch Obstruction Test. The Carrier deemed Claimant's alleged dishonesty extremely serious and dismissed him from its employment. 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 contends that if he needed help with personal problems, he should have contacted the Employee Assistance Program (EAP) rather than lie to his Supervisor. It asserts that during Investigation, Claimant admitted he had not performed the tests. It contends the only argument to be made is that the termination was harsh and excessive, which is a call for leniency the Board cannot grant. The Carrier asserts it has met its burden of proof.

The Organization points out that Claimant was totally honest during the Investigation process but was not offered a fair and impartial process. It contends the discipline was excessive in view of the fact that no damage or injury resulted from Claimant's actions. In addition, it notes the incident was isolated. Claimant

had served the railroad for 14 years, the Organization points out, claiming this mitigating circumstance was ignored by the Carrier. The Organization also notes that Claimant has contacted EAP to learn how better to handle personal issues so they do not distract him from work. His supervisor confirmed that other than this one incident, Claimant has been a good employee.

During the hearing, Claimant made the following admission: “On the incident charged for March 28th, uh, as far as the switches being performed, uh, the switches were, were not performed to the best of my ability. I was not, I was not in the area and I did not perform them.” This admission provides substantial evidence of the rules violations with which Claimant has been charged. He had no track authority for the dates he claimed he did the work in question. The alleged dishonesty is exacerbated by his assertion that he used the track authority of another employee, who denied the assertion. His situation is aggravated further by the fact that he submitted the tests which he now admits were not done. These aggravating circumstances must be weighed against the mitigating factors propounded by the Organization.

Claimant’s honesty during the investigation is to his credit. That said, the Carrier relies on the honesty of its employees in meeting its heavy obligation to assure safety to both employees and the general public. Given the importance of trust in the Carrier-employee relationship, the Carrier had sufficient reason to end the employment relationship once that trust was destroyed. Progressive discipline could not repair such damage. As a result, the Carrier was within its rights to terminate Claimant’s employment.

**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 28th day of November 2016.