

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42466
Docket No. SG-42912
16-3-NRAB-00003-150122**

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 M. D. Jackson, 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 June 25, 2013. Carrier’s File No. 35-14-0002. General Chairman’s File No. 13-029-BNSF-20-C. BRS File Case No. 15071-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 May 31, 2013, Signal Supervisor Fike noticed Claimant Jackson was not at his headquarter location at the beginning of his shift. Claimant's assignment started at 11:00 P.M. on May 31, 2013 and ended at 7:00 A.M. on June 1, 2013. Time for working this type of shift is submitted on the day the shift begins. In this case, Claimant submitted eight hours of straight time compensation on May 31. Signal Supervisor Fike waited for Claimant, but when he did not show up, he assumed the Claimant had received permission from another supervisor to take the day off. When he saw that Claimant had put in for an eight hour shift, Signal Supervisor Fike initiated an Investigation.

The Carrier held the Investigation hearing on June 25, 2013, for the purpose of assembling relevant evidence. Based on the record made at the hearing, the Carrier found Claimant in violation of MOWOR 1.6 – Conduct and MWOR 1.15 – Duty – Reporting or Absence by claiming time not worked and failing to report at the beginning of his shift as required. As a result, he was issued the record suspension at issue here. The Organization protested the discipline, which the Carrier rejected on appeal. The claim was fully processed, without resolution. As a result, the Organization presented the dispute to the Board for hearing and decision.

The Carrier finds it significant that the Organization did not argue that Claimant was at work on time or that he actually worked eight hours. In its view, since he was not there at shift start, he should not have claimed a full work day.

The Organization contends the Carrier has to support discipline with facts. It finds it significant that no witness testified that they saw Claimant come in late. In its view, Claimant's Supervisor simply made assumptions when he went through the building and could not find him. Nothing in the record shows he was not there, the Organization maintains, noting he could have been getting his material or using the restroom. Further, the Organization contends that Claimant's manager did not try to find him, did not inquire with the call center and gave conflicting testimony about whether he saw the Claimant that morning. In sum, the Organization insists there is no evidence of record establishing that Claimant was not there and the Carrier has not met its burden of proof.

The Board finds it significant that Claimant could not recall whether he was at headquarters at 11:00 P.M. on May 31. This means the Carrier's allegation, that he was not on premises, stands un rebutted on the record. Claimant's Supervisor waited for him yet Claimant did not show. No witness could counter his apparent absence with testimony that Claimant was seen anywhere on premises at any time

near the beginning of his shift. Though the Organization has argued that Claimant might have been in the bathroom or getting supplies, there was not so much as a scintilla of evidence that this was the case. The arguments are pure conjecture; Claimant's own testimony does not back this up.

Given the totality of the evidence, the Board finds that the Carrier had substantial evidence to support its conclusion that Claimant claimed eight hours' time worked when he was not present for the entirety of his shift.

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.