

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42851
Docket No. SG-43130
18-3-NRAB-00003-150284

The Third Division consisted of the regular members and in addition Referee Patricia Bittel when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company (Former Burlington Northern
(Railroad 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.C. Smith, 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 Claimant the hard and excessive discipline of a Standard Formal Reprimand with a 1-year review period without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on October 8, 2014. Carrier's File No. 35-14-0021. General Chairman's File No. 13-047-BNSF-154-TC. BRS File Case No. 15112-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 was a Signalman on Alliance Crew CSX0281. On August 16, 2014, Claimant's DOT/CDL expired. The Carrier found this to be in violation of MOWOR1.13 and issued the discipline here concerned. The Organization protested the discipline as improper. The matter was duly processed to consideration by the undersigned Board of Adjustment. The parties to said dispute were given due notice of hearing. This Division of the Adjustment Board has jurisdiction over the dispute here concerned.

Realizing that many Signal employees had allowed their DOT medical certification and/or CDL to expire, BNSF granted a one-time, 120-day grace period for those employees to come into compliance with the Policy without penalty. In addition, meetings with all Signal employees were held during which the importance of the policy was explained as well as the consequences for those who did not maintain the required medical clearance and licensing going forward. The revised Signal DOT/CDL Policy, which was published and mailed to every Signal employee's home, states: "All signal crew members, in order to be on their current positions, must be DOT qualified, acquire and maintain a valid Class 'A' CDL...." Claimant was sent two individual notifications prior to expiration of his license, one 60 days before expiration and another 30 days before his license expired. The Carrier points out it was his responsibility keep the Company apprised of his correct mailing address. It notes Claimant his responsibility to maintain his CDL.

The Claimant asserted he received neither the 60 day nor the 30 day notice of expiration because he moved several times. The Organization emphasizes that as soon as he was notified, he came into compliance. It was not until Saturday, August 24, 2013 that the Claimant signed for a delivery of an investigation notice and learned of that his CDL had expired. In the Organization's view, it is significant that he received notice that he was compliant on August 27, within three days. The Organization argues he resolved the problem as soon as he learned of it, and maintains the only issue is that he did not get his mail. There was no intent on the

part of the employee to violate any rule, it asserts, and the employee should not be punished when he acted so swiftly to effect a cure.

It was the Claimant's responsibility to provide the Carrier with an accurate address to which it could send mail. It was also his responsibility to maintain a current and valid CDL. The Claimant failed to do these things. The Board recognizes that there is a mitigating circumstance in that the Claimant acted quickly in resolving the problem after he became aware of it. In the view of this Board, the Carrier has taken mitigating circumstances into consideration; the discipline invoked is a Formal Reprimand and nothing more. The Carrier's election of a Formal Reprimand with a 12-month review period was appropriate 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 10th day of January 2018.