

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 42852
Docket No. SG-43166
18-3-NRAB-00003-150228

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)

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 J.C. Greenfield, 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 harsh and excessive discipline of a Standard Formal Reprimand with a 1-year review period without providing him a fair and impartial Investigation or meeting its burden of proving the charges in connection with an Investigation held on September 23, 2013. Carrier also violated Rule 56 when it failed to provide the Claimant with proper instruction regarding the locating of underground cables. Carrier's File No. 35-14-0014. General Chairman's File No. 13-042-BNSF-188-SP. BRS File Case No. 15114-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 Carrier alleges that on August 6, 2013, a remote controlled locomotive hit an unmarked cable which was also mismarked on the cable map. It asserts the unmarked cable was approximately 8.5 feet away from its indicated location. According to the Carrier, when a contractor performed construction based upon Claimant's map, the contractor cut signal cables, resulting in three delays. The Claimant Greenfield was found responsible and assessed a Formal Reprimand and one-year probation for violating Signal Instruction 1.2, Signal Cable Locate Policy and EI 26:3.2 A.

The Organization protested the discipline as unjust and the claim was processed to the 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 involved herein.

The Carrier maintains there was no prejudicial procedural violation. It contends the Claimant was required to be familiar with all rules and had access to all rules, instructions, and policies applicable to his assignment. In addition, it noted he received annual rules training as well as periodic safety training during which these rules, instructions, and policies were reviewed.

It explains that training is on the job and asserts the Claimant has extensive on-the-job training associated with cable locating. It notes that the BNSF Signal Training Team also has trainers available onsite if needed. In its view, Claimant could have sought further training if he felt uncomfortable with the underground cable locating process at any time.

The Organization alleges a breach of procedural due process in that the Claimant was denied access to certain evidence in advance of the hearing. It acknowledges that a recess was taken to permit review of the evidence during the hearing.

The Organization points out that Supervisor Freeman did not have the form required in Engineering Instruction 26.3.2. It argues the record establishes that the

Claimant's co-worker was in the field with the wand locating the cable, while the Claimant was inside a bungalow recording his co-worker's findings. In its view, the Claimant cannot reasonably be held responsible for mislocation of the cable under these circumstances.

The Board can find no prejudice due to procedural error.

The Claimant and his co-worker were tasked to reliably locate cable and mark it on the map. The Carrier has established that the cable of concern was not accurately placed on the map, and that this error caused delays. The question to be decided is whether the Claimant was responsible for this error.

At time the cable was located, the Claimant was in a bungalow with no windows. Though certainly he participated in the wrongful cable location, the Board has reviewed the Carrier's evidence and found no rule violation by the Claimant, by way of either commission or omission. As a result, it cannot be said that the Carrier has met its burden of proof.

The claim is sustained in full. The Carrier shall immediately remove the discipline from Claimant's record, with seniority, vacation and all other rights unimpaired and make him whole for all time lost as a result of this incident.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of January 2018.