

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42855
Docket No. SG-43209
18-3-NRAB-00003-150433**

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 D.A. Dare and N.A. Wheeler, 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 their personal records, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of dismissal to the Claimants, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on January 13, 2014. Carrier's File No. 35-14-0027. General Chairman's File No. 14-006-BNSF-161-K. BRS File Case No. 15178-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 October 28, 2013, a derailment occurred at milepost 180.1 on the Afton Subdivision. Upon Investigation, the Carrier concluded that the derail was caused by Claimants having wrongly located a cable and having failed to isolate it.

Signal Instruction 1.2 Signal Cable Locate Policy states in pertinent part:

“4...live wires (including track wires) must be isolated prior to testing. This can be accomplished by opening test links on both ends. Before opening test links, authority or protection must be provided for affected signal and crossing warning systems. Both employees were dismissed. The Organization contests the legitimacy of the discipline. The parties to said dispute were given due notice of hearing. This Division of the Adjustment Board has jurisdiction over the dispute involved herein.”

After the derailment, Signal Supervisor Mark Hunter investigated and determined the switch points at the location of the derailment were not completely thrown, and that the switch repeater was falsely energized. He found that a contractor had been boring pipe for PTC cables and severed a mislocated cable, causing the switch repeater to be falsely energized. The Carrier maintains this prevented the switch from fully throwing in a reverse direction, causing the derailment.

The Claimants were the signalmen responsible for locating the cables. From the Carrier's vantage point, they did not follow proper procedures because the wires were not isolated from each other.

Claimant Dare admitted he did not follow the policy when he located the wire. Wheeler stated he was outside with the wand, not aware of what Dare was doing and did not double check Dare's work. In the Carrier's view, both employees were responsible for proper placement and isolation of the cable. Since both employees were under record suspensions, the Carrier argues dismissal was the appropriate measure.

The Organization contends that both employees requested training on Signal Instruction 1.2 but their request was denied. It notes that neither one of them has

had this training. Both employees followed procedure, it maintains, arguing there is no evidence otherwise. The outside person during a cable locate only knows that the person inside is energizing cables; he or she has no idea which wires they are manipulating or how. It concludes the discipline was harsh and excessive.

Since two wires were attached to the same terminal, the Board is not persuaded by the lack-of-training argument. Both employees were Signal Safety certified and fully capable of recognizing that two wires should not be on the same terminal. However, the Board does not believe both employees bear equal responsibility for this incident. Wheeler was outside; there was a windowless wall between him and Dare. Wheeler had no way to evaluate Dare's methodology in attaching and detaching wires inside the bungalow. He had no way to know Dare had connected two wires to the same terminal; rather, his job was to focus on the readings from his wand. The Board can find no rule violation by Wheeler. By contrast, Dare was fully responsible for attachment of the wires, and in this case, for the switch repeater being falsely energized.

Claimant Dare was under a record suspension with 36 month review period dated 2/21/2013 for backing Company vehicle into a pole. The incident here concerned was properly deemed a Level S violation. The Board finds Dare's dismissal was reasonable under applicable policy.

The claim of Claimant Dare is denied.

The claim of Claimant Wheeler is sustained in full. The Carrier shall immediately remove the discipline from his record and reinstate him, subject to its policies on return to work, with seniority, vacation and all other rights unimpaired and make him whole for all time lost as a result of this incident. Lost overtime shall be compensated at the overtime rate. His compensation shall be reduced by any interim earnings he may have had from outside employment.

AWARD

Claim sustained in accordance with the Findings.

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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.