

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42860
Docket No. SG-43243
18-3-NRAB-00003-150464**

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. Carroll, for payment for all time lost, 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 a Level S (Serious) 30-day record suspension with a 3-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 February 11, 2014. Carrier’s File No. 35-14-0032. General Chairman’s File No. 14-012-BNSF-129-S. BRS File Case No. 15183-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 the Claimant failed to wear the required personal protective equipment (“PPE”) while using a klein knife to cut a zip tie. He was found to have violated Maintenance of Way Safety Rules (“MWSR”) 1.2, 1.2.5, 21.0, 21.1, 21.2.3 and 7.3.3. The Organization protested the discipline as improper. The parties were given due notice of hearing. Failing to resolve the matter, the Organization referred the dispute to the National Railroad Adjustment Board (“NRAB”) for arbitration. This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The Carrier explained that on December 9, 2013, the Claimant began cutting a zip tie with his knife while not wearing his required PPE, and in the process, he cut his hand. As the Carrier describes it, it was a massive cut. It maintains at the hearing Claimant admitted to non-compliance with Rules S-2.0, 2.1, 21.2.3 and 7.3.3. In its perception, the Organization has provided no evidence of disparate treatment. Each case is treated individually, it asserts. The Carrier is of the view that a safety violation is serious any time when it could result in injury, and justifies the disciplinary action accordingly.

The Organization contends the punishment was excessive and inconsistent with the Carrier’s PEPA policy. At best, the Carrier might argue for a non-serious PEPA violation as being applicable for this case, it argues. In its assessment, the Claimant should not be assessed harsher discipline than in similar cases where a Standard Reprimand was the penalty. He should hardly be punished, it maintains, for accepting responsibility and being up front and honest about the incident. In the Organization’s view, the fact that Claimant had no prior disciplinary problems should have been considered as a mitigating circumstance, yet the Carrier completely ignored this critical fact and issued an unreasonably severe penalty.

The Claimant had a clean record and was forthright about his mistake. The Board is not persuaded that the Claimant’s actions warranted a full 30-day record suspension with a 36 month review period. Though clearly he failed to wear protective equipment as required by the rules, the Board finds the discipline in this case was excessive, particularly in the context of progressive discipline whereby the Claimant should be afforded an opportunity to learn from mistakes before higher levels of discipline are imposed. We do not find the objectives of progressive discipline were reasonably served in the selection of the very serious penalty in this case.

The claim is granted in part. The Level S 30-day record suspension with a 3-year review period shall be removed from the Claimant's record, and shall be replaced with a Standard Formal Reprimand with a 1-year review period. The Carrier shall comply with the terms of this Award immediately upon receipt of a fully executed copy thereof.

AWARD

Claim sustained in accordance with the Findings.

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.