

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42862
Docket No. SG-43312
18-3-NRAB-00003-150463**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Company
(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.W. Kealey, for compensation for all time lost, including skill pay and overtime, with all rights and benefits unimpaired, and 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 Claimant the harsh and excessive discipline of a Level S (Serious) 15-day actual suspension and a 15-day record suspension with a 3-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 February 17, 2014. Carrier's File No. 35-14-0031. General Chairman's File No. 14-008-BNSF-33-K. BRS File Case No. 15181-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 February 7, 2014 the Claimant worked as a Signal Inspector and performed tests and inspections on the highway grade crossing at County Road 28 on the LaJunta Sub-division. The next day a train went through the crossing without the lights activating. The Carrier determined that the Claimant had violated Signal Instruction (“SI”) 7.2A Highway Grade Crossing Warning Systems-Disabling and SI Test Procedure (“TP”) -106 Inspection and Test: All Systems – Relays. As a result, he was issued of a Level S (Serious) 15-day actual suspension and a 15-day record suspension with a 3-year review period. The Organization grieved, alleging the discipline to be unjust.

The parties to said dispute were given due notice of hearing thereon. Failing to resolve the matter, the Organization referred this dispute to the National Railroad Adjustment Board (“NRAB”) for arbitration. This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

After the malfunction, Maintainer Nelson was sent to investigate. He reported that the ER relay was hanging from the plug board and plugged it back in. Further review of the incident also revealed a short warning time of 19.9 seconds instead of the 30 seconds required by BNSF for this crossing while the Claimant was performing his tests the previous day.

The Carrier contends the Claimant failed to ensure that the relay he removed was properly reseated before he left the bungalow. It notes the Claimant was the last person to disturb these circuits prior to the relay being found hanging from the plug board the following morning. The Claimant freely admitted during the investigation that he did indeed remove that relay in order to perform his tests. In the Carrier’s view, the only reasonable conclusion is that Claimant did not ensure that the relay was securely reseated as required before he left. It reasons the relay could not have been properly re-installed because it was shaken loose after only three trains passed. In its view, this type of equipment, when properly installed, is designed to withstand vibrations generated by passing trains for years.

As the Carrier sees it, the Claimant falsely energized the crossing relays, resulting in a short warning time of 19.9 seconds for an oncoming train. The FRA considers any warning time less than 20 seconds an activation failure of the system on normal train moves. BNSF's mandatory warning time for this crossing was a minimum of 30 seconds not 20. Signal Instruction TP-106 clearly states authority must be obtained prior to performing these tests; yet the Claimant failed to properly notify the Dispatcher and receive authority to give the required warning time for train traffic. The Carrier argues that under these circumstances, the discipline was anything but improper or harsh.

The Organization maintains that because there is evidence that the Claimant tested the crossing before he left, he did not violate any rules. The Organization also claimed that because three trains allegedly went through this crossing without incident after the Claimant left the location, it is established that he left the bungalow with everything working properly. It attributes the loose wire to vibration from passing trains and argues this intervening circumstances breaks any chain of causation. The Organization contends it is irrelevant whether the Claimant failed to obtain proper authority because he was not so charged.

The Board finds the Organization's argument persuasive to the effect that the Claimant was not charged with failure to obtain proper authority.

The rules regarding testing clearly and consistently required the Claimant to reconnect the wire to the operating coil or return the plug-in relay to the rack. In the opinion of this Board, if this duty had been properly performed, the wire would not have been found hanging after the Claimant left. It is uncontroverted that the Claimant was the last person inside the bungalow. Absent a defect (of which there is no evidence) the Board is persuaded that the wire, if properly attached, would stay in place despite passing trains; Carrier evidence on this point was not persuasively rebutted. It follows that passing trains would not account for the wire being found hanging loose. In addition, it is clear that a warning time of less than 20 seconds is insufficient.

Though certainly a 15-day actual suspension is a heavy penalty, the Carrier's choice of this penalty cannot and should not be second guessed by the Board because of the safety implications of the Claimant's work.

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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.