

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42863
Docket No. SG-43313
18-3-NRAB-00003-150516**

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 A. Shastid, 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 his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of dismissal to the Claimant, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on March 28, 2014. Carrier's File No. 35-14- 0038. General Chairman's File No. 14-022-BNSF-121-T. BRS File Case No. 15177 -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 determined that the Claimant failed to follow his supervisor's instructions on March 8, 2014 in violation of Maintenance of Way Operating Rule ("MWOR") 1.13—Reporting and Complying with Instructions as well as MWOR 1.6 – Conduct. At the time the Claimant was under a review period for a prior Level S suspension. As a result, he was dismissed. The Organization protested the dismissal as 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.

The Claimant was a Control System Electronic Technician working the night shift. The Carrier describes events as follows: on March 8, 2014, Supervisor Neal gave a job briefing and assigned the Claimant and his co-worker, Rodriguez, the task of shutting down certain servers in preparation for a time change. Neal followed up with an email explaining why the shut-down was going to be critical to avoid system problems when the clocks were moved forward an hour. Neal again reminded the Claimant at 12:41 A.M. of his instructions, including the fact that this critical task should begin no later than 1:40 A.M. At 3:06 A.M. (time change occurred at 2:00 A.M. so 2:06 A.M. became 3:06 A.M.), Neal learned Claimant had yet to begin the task. According to the Carrier, Supervisor Neal quickly started performing the job himself, splitting the work with Rodriguez. The Carrier contends dispatchers were unable to control 654 miles of track and 282 control points for over 20 minutes.

In the Carrier's view, Claimant's defense -- that he was having trouble logging on to a system called "What's Up Gold"-- is without merit. It explains that "What's Up Gold" has nothing to do with the system shutdown and reboot process, but is used to put the servers into maintenance mode. Besides, during the second briefing at 12:41 A.M., Claimant was informed that Rodriguez had already placed the servers into maintenance mode.

The Carrier discounts the Claimant's assertion that he was prevented from performing the assigned tasks because he was called away to another job. If he was not sure which task deserved priority, he should have asked his supervisor. His prior Level S suspension was for the same offence and there were prior similar incidents in 2009 and 2010. This indicates he has had ample opportunity to benefit from progressive discipline but has failed to do so.

The Organization argues that Neal's instructions were not clear. It points out that a major part of the CSET's job is to immediately respond to any problem the seventy or more dispatchers may suddenly face. The Claimant faced a critical problem of a dispatcher not being able to communicate with trains all across her dispatched area:

“JEFFERY L FAVER: Okay, so on a track warrant situation where she's issuing a warrant to move from A to B, if she can't issue a warrant does the train have to stop?

SCOTT A NEAL: Yes.

JEFFERY L FAVER: Okay, uh, so that would make it a critical situation, right?

SCOTT A NEAL: Yes. TR 84

The Organization contends that faced with this criticality, Claimant appropriately gave the dispatcher priority. In its view, this was a reasonable exercise of discretion in a difficult situation. It notes Neal acknowledged that the dispatcher problem was more important (Pages 83-84):

JEFFERY L FAVER: So it's your opinion that if you had not taken that trouble call would you be in this investigation for negligence for the trouble call, for not taking care of it?

ALAN SHASTID: Well, of course. TR 122 (about)”

The Claimant admitted he misjudged the amount of time needed to work with the "What's Up Gold" program. He explained that he only uses the password every six months and forgot it. He explained that the computers had been going down and coming back up without a hitch twice a year for time changes. The Claimant asserted he did not hear his supervisor's instructions and later misunderstood them. In the Organization's assessment, this simply does not constitute conduct warranting dismissal. It notes that Management has provided no substantiation for its assertion that loss of control resulted from the delay in shutting down the servers.

Neal admitted that when dispatchers have to stop a train, it is a critical situation. TR 84. The Claimant appeared before the Board and stated the computers had made the transition successfully in prior years when there was a time change. This was why he gave the dispatcher priority. However, he was late in shutting down the computers because he forgot a password. This is what created the conflict between tasks requiring him to make a decision about which task warranted priority.

The problem in this case is not the Claimant's decision to give the dispatcher priority. That decision had to be made in the face of time criticality and with knowledge that while there was no known problem with the computers due to the time change, there was a serious problem with a train being stopped and a dispatcher needing immediate assistance. The Claimant's decision in this situation was entirely reasonable.

The problem lies with the Claimant's actions leading to the need for this decision in the first place. He knew full well that his supervisor had deemed shutting down the computers a time critical task. He had also been clearly advised to start this task by 1:40 am. Yet, in the face of these instructions, he fiddled around with the "What's Up Gold" program without knowing his password. He wasted time doing this, time that was not available to him. The Claimant failed to immediately talk to Rodriguez about his password problem, he failed to let his supervisor know he was having trouble getting started on time and he failed to give his task the time criticality he had been instructed that it deserved. Instead, he made the unwarranted assumption that because things had gone smoothly in the past, there was nothing to worry about.

The Claimant knew or should have known that time was of the essence, at least in his supervisor's eyes, and should have acted accordingly to make sure the shutdown began on time. His failure to do so was properly considered a failure to follow the instructions of his supervisor. His prior discipline establishes that he has had ample opportunity for progressive discipline. In this context, the Carrier's choice of disciplinary penalty was not improper.

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.