

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42866
Docket No. SG-43465
18-3-NRAB-00003-160070**

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 P.C. Swendsrud, for reinstatement to service with compensation for all lost wages, including overtime and 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 Claimant the harsh and excessive discipline of dismissal without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on May 8, 2014. Carrier's File No. 35-14-0041. General Chairman's File No. 14-026-BNSF-154-TC. BRS File Case No. 15224-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, a Signal Inspector, had tested signal relays without obtaining the proper authority on April 22, 2014. This was deemed a violation of Signal Instruction ("SI") 7.2A Highway Grade Crossing Warning Systems-Disabling. At the time he was under a review period for a Level S suspension. As a result he was dismissed.

The Organization protested his dismissal as unjust. The parties to said dispute were given due notice of hearing. 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 Carrier maintains that because the Claimant was testing relays without the required authority, a westbound train traversed through the crossing on main one. The crossing warning system failed to activate when the train came through. Even though the Claimant immediately reported the incident to his supervisors, the Carrier asserts he neglected to disclose his responsibility for this very dangerous situation until two days later when he sent a text message to his Supervisor.

Supervisor Kirk Jensen testified to the Claimant's admission that he was in the bungalow sliding relays at the time of the incident. In the Carrier's view, Claimant admitted at hearing to being inattentive: "then lost my concentration and proceeded to test relays and that's when the incident occurred. I was checking the XR relay and had just finished when the west bound on main one passed through the crossing."

The Carrier contends there is no evidence of any medical condition that would affect the Claimant's ability to focus, as alleged by the Organization. It notes the affirmative defense of diabetes was brought up for the first time at hearing; it was never mentioned in any of the Claimant's discussions with his prior supervisor or in his written statement. The Carrier contends there is no evidence

substantiating a diagnosis of diabetes or that the Claimant was experiencing hyperglycemia on April 22, 2014. The Carrier notes that the Claimant testified to experiencing issues with “focus” as early as February. In its view, he had a responsibility to remove himself from his safety sensitive position or, at the very least, notify his supervisor.

The Organization points to the Claimant’s 22 plus years of service as a mitigating circumstance. It argues he was a diagnosed diabetic who was having his medication adjusted to control his blood sugar. It explained his episodes of losing focus was a problem only while his medication was still being adjusted. The Claimant himself described a snowmobile accident where he lost focus. He claimed his physician told him it was called fugue state when he would “zone out” for a moment. He asserted his medication has since been altered and his blood sugar is now under control.

The Claimant has confirmed that he lost focus at the time of the incident here concerned. The Organization would categorize the cause as a temporary problem which no longer exists. The Claimant acknowledged that he had been having trouble with focus but asserted the problem has since been successfully addressed and his diabetes is under control now.

The problem with this defense is twofold. First, the Claimant did not provide so much as a doctor’s statement or a copy of a prescription to bolster his claim. But even assuming that it is established as a matter of record that the Claimant’s diabetes was not well controlled at the time of the incident, this fact in and of itself is cause for very serious concern. Any employee who knows or should know that (s)he may not be physically or mentally capable to meet the stringent requirements of working in a highly safety conscious environment is under obligation to so notify the employer.

The Carrier bears the weighty responsibility of making fitness for duty determinations with the assistance of medical professionals. Any employee who is not sure whether (s)he can safely perform the duties of a job must surface this concern to the Carrier for evaluation. The Claimant, by his own testimony, had already been in a snowmobile accident due to his alleged condition. This put him on direct notice that his focus was inconsistent and that accidents could happen as a

result. He was obliged to inform his employer of this condition, yet failed to do so. This failure constituted a breach of trust that cannot be rectified by progressive discipline. It properly resulted in a finding that SA 7.2A had been violated. Though the Claimant does indeed have a record of long service, such service cannot serve as a mitigating circumstance unless such service is of high quality. Instead, we find that the Claimant was actively under a review period for another serious offense. The Carrier was justified in its determination that the Claimant cannot be relied upon to act responsibly in insuring railroad safety, and therefore cannot be retained as an employee.

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.