

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42869
Docket No. SG-43501
18-3-NRAB-00003-160197**

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 L. Weatherall, for re-establishment of his right to hold a Signal Maintainer, Foreman, or Signal Inspector position, payment for all time and benefits lost, and his personal record cleared of any mention of this matter, account Carrier violated the current Signalman Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of a Level S (Serious) 37-day actual suspension with a three-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 May 20, 2014. Carrier's File No. 35-15-0010. General Chairman's File No. 14-040-BNSF-121-T. BRS File Case No. 15310-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 on May 2, 2014 at 1536 the train crew on south bound H TULTEA1 30 reported that the crossing warning lights and gates did not activate until they were actually passing through the crossing. The Claimant had just performed the 30-day test earlier that day with another maintainer. The Carrier determined that an XCFR card with the wrong frequency had been installed in the PMD-2 module, or box. It found the Claimant responsible and deemed this a violation of Signal Instruction (“SI”) 13.1 and issued the Claimant a Level S 37-day Actual Suspension with a three-year review period as well as disqualified him from holding maintainer, foreman, or inspector positions for a period of one year. The Organization grieved the discipline as unjust.

The parties to the 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 Carrier argues the Claimant’s mistake resulted in the crossing not providing the required advance warning and protection for approaching trains, placing the public and BNSF’s employees in harm’s way. It maintains the Organization’s assertion of insufficient training is misguided. It notes the Claimant first worked as a maintainer on September 24, 2012, not on February 11, 2013 as the Organization contends. In its view, testimony during the investigation established that the Claimant received several weeks, not just one, of mentorship and that he continued to receive guidance and support from qualified journeymen and BNSF Officers, even after his February 2013 assignment, up until this incident occurred. In addition, Supervisor Sparks provided him with detailed instructions by email, yet the Claimant did not notify Sparks of any questions or needed additional guidance.

In any event, the Carrier contends the number of weeks of mentorship is irrelevant because it would not have prevented Claimant from following BNSF’s published procedures, which Claimant admitted he was required to know and comply with.

In its view, the assessment of a Level S 37-day Actual Suspension was appropriate for this very serious violation. In addition, since the Claimant did not

have five years of service at the time of this incident, he did not qualify for the reduced review period of 12 months.

The Organization asserts the Claimant suffered from a lack of training and/or mentorship as required by FAST Track Modification Agreement negotiated between the parties on October 6, 2011. That Agreement provides as follows:

“The two-week mentorship period identified in Section 2(f)(iii) will be increased to three weeks. All three weeks of the mentorship will occur on the Fast Track employee's assigned position site. A "Mentor" is an experienced journeyman with experience on the type of position for which he/she are to provide mentorship. There is no requirement that the trainee's Mentor be the same person for the entire three-week period.”

Asked whether he had received this required training, the Claimant replied as follows:

“No, I haven't. I'm, at my first week, I mean, I had a couple guys come through and show me, give me some tips on, I was getting ready for the FRA inspection or the text dot and that's about the only mentorship I've had. TR 68”

The Organization contends the discipline cannot be deemed proper in light of this insufficiency of training.

The Board finds that the Carrier has properly placed responsibility for the incident on the Claimant. He does not deny that he failed to perform his job properly:

“7. GARY PETERS: Uh, and this, uh, Signal Instruction 13.1?

8. BRYON SPARKS: Yes. And in there it also says that he has
9. to test per FRA test procedures, uh, BNSF's test
10. procedures. And if he would have done that, he would have
11. found the problem on the normal side of the box. TR 21

* * *

10. GARY PETERS: Um, Mr. Weatherall, did you, uh, did you
11. place that transceiver board in that, uh, in that box?

12. LAQUINCY D WEATHERALL: Um, I'm not sure, but, but I did
13. change out the box on, and I had an issue with a couple of
14. cards and from there I, I assume I did, um, change out the
15. transmitter card not knowing. ”

This record is adequate to establish that the Claimant was indeed responsible for installing a card with the wrong frequency. The record also establishes that the Claimant did not receive the three weeks of mentoring required by way of negotiation between the parties. This Board believes the proper time to protest a lack of training is at the time of assignment to a task for which one is unprepared -- and not after safety has been compromised. That said, the failure to provide fully three weeks of mentoring constituted a contract violation by the Carrier which must be deemed a mitigating circumstance.

The Carrier's decision to disqualify was made in the context of inadequate training as defined by contract, and therefore cannot be sustained. Though the Board certainly acquiesces generally when the Carrier makes qualification decisions, it cannot do so when the qualification determination ignores a negotiated training obligation which has been denied. Where a training requirement has been mutually agreed to by the parties, the Carrier cannot be permitted to shortcut that training, then deem the affected employee disqualified because of error the training was designed to address. The Carrier's qualification determination is invalid on its face.

The claim is sustained in part. A Level S suspension with 36 month review period shall remain on Claimant's record, however the actual suspension shall be reduced to 15 calendar days with no further record suspension and he shall receive retroactive compensation for any pay or benefits lost from the 23 extra days of his actual suspension. The disqualification of Claimant for maintainer, foreman and inspector positions is revoked and will be removed from his record. He will be given fully three weeks mentoring if/when he is assigned to a maintainer position.

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.