

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43157
Docket No. SG-43555
18-3-NRAB-00003-160240**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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.C. Taylor, for his personal record cleared of any mention of this matter, 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 three-year review period to the Claimant without providing him a fair and impartial Investigation, and without meeting its burden of proving the charges against him in connection with an Investigation held on August 27, 2014. Carrier’s File No. 35-15-0012. General Chairman’s File No. 14-044-BNSF-121-T. BRS File Case No. 15311-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.

By notice dated August 20, 2014, the Claimant was directed to attend a formal hearing on charges that the Claimant had violated Carrier rules in connection with an August 13, 2014, incident in which the Claimant allegedly had failed to treat others in a respectful manner. The Investigation was conducted, as scheduled, on August 27, 2014. By letter dated September 18, 2014, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being assessed a Level S thirty-day record suspension, as well as a three-year review period. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant was afforded a fair and impartial Investigation, because substantial evidence establishes that the Claimant is guilty as charged, because there is no merit to the Organization's arguments, and because the discipline imposed was lenient and was neither excessive nor arbitrary. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to afford the Claimant a fair and impartial Investigation, because the Carrier subjected the Claimant to disparately harsh treatment, because the Carrier has failed to meet its burden of proof, and because the discipline imposed was harsh and excessive.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was guaranteed all of his due process rights throughout the proceeding.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier Rule 1.6 when he was quarrelsome and discourteous toward a fellow employee during a workplace dispute. A review of the transcript makes it clear that the Claimant acted inappropriately and disrespectfully toward Mr. Ronay and he became belligerent and aggressive toward him. Ronay testified that he felt threatened and was concerned that he would be a

victim of some violent act on the part of the Claimant. The Claimant was clearly screaming at Ronay and, according to Ronay, he seemed to be losing control. Ronay was definitely fearful as a result of the Claimant's behavior.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was issued a first Level S, which resulted in a thirty-day record suspension and a three-year probationary period. The record reveals that the Claimant had previously been counseled by management regarding his behavior. Given the previous disciplinary background of the Claimant, plus the seriousness of this current incident, the Board must find that the Carrier did not act unreasonably, arbitrarily, or capriciously when it issued the first Level S to the Claimant for his misbehavior. Therefore, this claim must be denied.

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 30th day of May 2018.