

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43164  
Docket No. SG-43657  
18-3-NRAB-00003-160286**

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 D.A. Davis, for compensation for all time lost, including overtime, with credit for all qualifying days and benefits lost, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 2, 54, and 56, when it issued the Claimant the harsh and excessive discipline of a Level S (Serious) 39-day actual suspension with a three-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 October 1, 2014. Carrier’s File No. 35-15-0016. General Chairman’s File No. 14-057-BNSF-87-B. BRS File Case No. 15316-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 September 24, 2014, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules in connection with a September 22, 2014, incident in which the Claimant allegedly failed to comply with signal instructions and foreman instructions, resulting in an activation failure. The Investigation was conducted, as scheduled, on October 1, 2014. By letter dated October 28, 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-nine-day actual 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 and the Claimant's admissions establish that the Claimant is guilty as charged, because there is no merit to the Organization's arguments, because the Organization's requested remedy is improper, and because the discipline imposed was lenient and was neither excessive nor unwarranted under PEPA. 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 violated the Agreement by unfairly assigning the Claimant to supervise and train another assistant signalman without working with and under a qualified signalman, because the Carrier's culpability led to the activation failure, 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 Rules 1.13 and 7.2A when he disabled a crossing when he was an assistant signalman and left the area getting the jumper. The Claimant admitted his wrongdoing during the course of the hearing. The transcript reads as follows:

**“FLANAGAN: Did you notify Mr. Wolf that you did not feel comfortable protecting that crossing?**

**CLAIMANT: No, I did not, sir.**

**FLANAGAN: Did you notify Mr. Eggebrecht that you did not feel –**

**CLAIMANT: No, I did not, sir.**

**FLANAGAN: . . . did you make an effort to get a qualified person there to jumper up that crossing?**

**CLAIMANT: No, I did not.**

**FLANAGAN: Ok. Do you understand the importance of 7.1 and 7.2 by leaving that jumper on there?**

**CLAIMANT: I understand the circumstances of my mistake, yes, I do.**

**FLANAGAN: Could you explain those to me. Please, sir?**

**CLAIMANT: Yeah, I could have killed somebody.”**

**Given those admissions, there is no question the Claimant was in violation of the rules.**

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 thirty-nine-day actual suspension for failing to comply with instructions. Given the seriousness of the Claimant's offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that discipline to the Claimant. 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.