

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 43168  
Docket No. SG-43698  
18-3-NRAB-00003-160334

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.W. Ragen, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time lost, including overtime and skill pay, and 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 him a fair and impartial Investigation and without meeting its burden of proving the charges against him in connection with an Investigation held on September 23, 2014. Carrier’s File No. 35-15-0020. General Chairman’s File No. 14-056-BNSF-154-TC. BRS File Case No. 15317-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 15, 2014, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules by allegedly falsifying payroll and hours of service records during the period from September 9 through 12, 2014. The Investigation was conducted, as scheduled, on September 23, 2014. By letter dated October 13, 2014, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier's service. 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, because the Organization's requested remedy is overbroad, and because the discipline imposed was appropriate and in accordance with 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 pre-judged the Claimant's guilt, because the Carrier failed to acknowledge and consider mitigating factors, 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. A review of the lengthy transcript in this case makes it clear 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 falsifying his hours of service and claiming pay for time that he did not actually work. The Claimant admitted at the hearing that his payroll hours of service were put in "incorrectly." He also admitted that he "inputted at the**

time” the time records that were not correct. He clearly stated, “All of them are incorrect for what actually occurred.”

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’s actions in this case clearly violate several Carrier rules relating to dishonesty. The Claimant admitted violating the rules and had sought to obtain money for time that he did not perform work. Dishonesty is a very serious offense, even on the first occasion. Given the Claimant’s admitted dishonesty in this case, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant’s employment. 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.