

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43169
Docket No. SG-43699
18-3-NRAB-00003-160432**

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 B.L. Dailey, for any mention of this matter to be 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 a 20-day record suspension with a 1-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 December 10, 2014. Carrier’s File No. 35-15-0022. General Chairman’s File No. 15-004-BNSF-33-K. BRS File Case No. 15315-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 November 11, 2014, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules by allegedly failing to report for duty on time on November 5, 2014. The Investigation was conducted, after two postponements, on December 10, 2014. By letter dated January 5, 2015, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being assessed a standard twenty-day record suspension, along with a one-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 appropriate and consistent 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 failed to meet its burden of proof, and because the discipline imposed was unwarranted, 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 1.15 and 1.48 when he failed to come to work on time on November 5, 2014. Although the Claimant was only one minute late, he was still tardy and in violation of the Carrier's rules since he did not report for work at the designated start time.

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 Carrier issued the Claimant a twenty-day record suspension and a one-year period of review for his violation in this case. The record reveals that the Claimant had other active standard violations in his record. His record shows a formal reprimand and a ten-day record suspension for failure to report for duty on two previous occasions. Given the disciplinary record of the Claimant coupled with this latest offense, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the discipline to the Claimant in this case. 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.