

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43170  
Docket No. SG-43700  
18-3-NRAB-00003-160444**

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 T.L. Knutson, for reinstatement to service with compensation for all time lost, including skill pay, with all rights and benefits unimpaired and with 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 December 15, 2014. Carrier’s File No. 35-15-0023. General Chairman’s File No. 15-006-BNSF-87-B. BRS File Case No. 15314-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 December 8, 2014, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had failed to comply with instructions while disabling a highway-rail grade crossing on December 5, 2014. The Investigation was conducted, as scheduled, on December 15, 2014. By letter dated January 6, 2015, 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 and the Claimant's admissions establish that the Claimant is guilty as charged, because there is no merit to the Organization's arguments and claim of disparate treatment, 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 failed to meet its burden of proof, because the Carrier ignored the mitigating circumstances, 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 failing to follow proper procedures and violating Signal Instruction 7.2A when he left his jumpers on a signal relay from the previous day. The Claimant's action created a false energy on the relay, preventing the crossing gates from activating. Consequently, when trains came through the intersection, the train's crew and public were in danger because of the failure of the crossing

warning system to activate. After work was done on the date in question, the Claimant failed to comply with the signal instruction. The Claimant admitted that he left the crossing and forgot to take his jumpers off. Moreover, he failed to fill out the proper paperwork that would prevent that type of incident from occurring. The Claimant took full responsibility for his wrongdoing in this matter.

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 disciplinary record indicates that he had previously received a Level S rule violation and was still in the review period. Moreover, he had previously also been granted leniency for a second Level S. Consequently, this was actually his third Level S violation. Given that previous disciplinary background, coupled with this extremely serious violation 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.