

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43171
Docket No. SG-43701
18-3-NRAB-00003-160497**

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 A. Morfin, for reinstatement to service with compensation for all time lost, including overtime, with all rights and benefits unimpaired, 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 in connection with an Investigation held on February 4, 2015. Carrier’s File No. 35-15-0029. General Chairman’s File No. 15-010-BNSF-87-B. BRS File Case No. 15389-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 January 28, 2015, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules in connection with a January 26, 2015, incident in which the Claimant allegedly failed to wear proper PPE and allegedly became confrontational and discourteous when approached by a foreman. The Investigation was conducted, as scheduled, on February 4, 2015. By letter dated February 27, 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 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 pre-judged the Claimant's guilt, because the Carrier 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, as well as Safety Rule 21.0, when he was not wearing his safety glasses on four different occasions after being instructed to do so by his foreman. In addition to failing to follow the requirements

of wearing the proper protective equipment, the Claimant also was confrontational and discourteous when he was approached by his foreman and given instructions to do so. The Claimant actually admitted that he did not have his safety glasses on the occasions that he was accused and also that he did not handle the situation correctly. The Claimant clearly admitted to the violations when he confessed during the hearing.

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 a very short-term employee. In addition, the offenses of which he was found guilty are terminable offenses, even on the first occasion. Consequently, given the only seven-month seniority of the Claimant, coupled with the seriousness of the violation, 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.