

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43176
Docket No. SG-43871
18-3-NRAB-00003-160462**

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 R.L. Heule, Jr., for payment for all lost wages, including overtime, and any reference to 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 a Level S (Serious) 30-day record suspension with a 3-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. 35-15-0026. General Chairman’s File No. 15-003-BNSF-119-D. BRS File Case No. 15374-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 7, 2014, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules in connection with a November 6, 2014, incident in which the Claimant allegedly failed to notify all employees in the work group prior to releasing track and time. The Investigation was conducted, after three postponements, on December 10, 2014. By letter dated January 7, 2015, 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-day record suspension and 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 the Claimant was responsible for ensuring the safety of everyone working under the authority that he had obtained, because there is no merit to the Organization's arguments, 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 principles of progressive discipline, 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 6.3.1 when he failed to properly clear the main track for train movement before releasing his track authority.

Consequently, there was a “near miss” incident with a train which could have been extremely serious. The Claimant was working as the employee in charge of a project on Main 1 and Main 2, and he was required to make sure that the work group and all of their equipment was clear of the tracks before he released the authority. The Claimant failed to do that and clearly violated Carrier 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 Level S thirty-day record suspension with a three-year review period. Given the seriousness of this offense, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that type of 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.