

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43182  
Docket No. SG-43975  
18-3-NRAB-00003-160318**

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 J.C. Taylor, for reinstatement to service with compensation for all time lost, including skill pay, 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 October 17, 2014. Carrier’s File No. 35-15-0018. General Chairman’s File No. 14-058-BNSF-121-T. BRS File Case No. 15312-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 October 2, 2014, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules in connection with a September 17, 2014, incident, first knowledge of which reached the Carrier on September 26, 2014, in which the Claimant allegedly had failed to operate his Carrier vehicle in a safe manner and allegedly had harassed a private citizen. The Investigation was conducted, after a postponement, on October 17, 2014. By letter dated November 11, 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, 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 committed multiple fatal procedural errors, because the Carrier failed to meet its burden of proof, because the Carrier improperly elevated the Claimant's discipline, 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.

Moreover, the record makes it clear that the Carrier filed the charges against the Claimant within the appropriate period after it first learned of the Claimant's misbehavior on the road.

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 1.6, 1.9, and 12.1.1 when he was found to have operated a Carrier vehicle in a reckless manner on September 17, 2014. The record reveals that a private citizen, Mr. Peacock, filed a complaint with the Carrier against the Claimant because he had been driving dangerously and made threatening moves toward Mr. Peacock. The Claimant also gave Mr. Peacock “the finger” as he sped and swerved around Mr. Peacock’s vehicle. The Claimant was working as a signal maintainer on September 17, 2014, when he engaged in that behavior. Obviously, that behavior had an impact on the Carrier as the Claimant was operating a Carrier vehicle. The Claimant’s actions clearly violated the Carrier’s 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 dismissed for his wrongdoing in this case. The Claimant’s discipline record shows that he had a previous Level S. Given the Carrier’s policy, the second Level S makes the Claimant eligible for discharge. The Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated this 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.