

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43183
Docket No. SG-43976
18-3-NRAB-00003-170008**

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. Wilcox, 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 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 May 18, 2015. Carrier’s File No. 35-15-0038. General Chairman’s File No. 15-027-BNSF-129-S. BRS File Case No. 15434-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 April 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 March 31, 2015, incident in which the Claimant allegedly failed to promptly report front-end damage to a Carrier vehicle, and another incident that occurred prior to April 22, 2015, in which the Claimant allegedly failed to promptly report rear-end damage to the same Carrier vehicle, knowledge of which first reached the Carrier on April 22, 2015. The Investigation was conducted, after a postponement, on May 18, 2015. By letter dated June 15, 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 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 and arbitral precedent. 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 Claimant was not aware that any incident had occurred, because the purported damage was nothing more than normal wear and tear, because the Carrier abused its managerial discretion by characterizing this matter as a serious offense, 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 Rule 12.1.1, as well as Vehicle Policy

Procedure Manual 11, when he failed to immediately report two incidents which caused damage to the right front side panel and rear bumper of a Carrier vehicle that he was operating. The Claimant admitted that he was turning the vehicle around and backed into some brush, but he did not report the incident until approximately one month later. At that time, the Claimant also reported, once again late, that there was additional damage to the front of the vehicle. Neither of those reports by the Claimant were prompt or an immediate notification as required by the 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, which included a thirty-day record suspension as well as a three-year period of review. Given the seriousness of the offense, the Board cannot find that the Carrier's action in issuing that discipline to the Claimant was unreasonable, arbitrary, or capricious. 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.