

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43189
Docket No. SG-44080
18-3-NRAB-00003-160651**

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 that:

Claim on behalf of J.M. Thompson, 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, and any lost compensation, including overtime, as a result of attending the Investigation, 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 March 23, 2015. Carrier’s File No. 35-15-0034. General Chairman’s File No. 15-014-BNSF-154-TC. BRS File Case No. 15386-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 February 23, 2015, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules by allegedly being dishonest and falsifying an FRA test and inspection records, with the Carrier first receiving knowledge of these matters on February 19, 2015. The Investigation was conducted, after two postponements, on March 23, 2015. By letter dated April 13, 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 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 committed fatal procedural flaws when it failed to include required details in its notices, because the Carrier failed to meet its burden of proof, because there is no support for the Carrier's position, 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 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 dishonesty and thereby violating Rule 1.6 for falsely reporting the completion of an FRA test and inspection. Although the Claimant failed to attend the hearing, the evidence that was presented was sufficient to support the finding that the Claimant was guilty of the falsification in a safety-

sensitive position which involves testing the Carrier's signal systems which control the safe movement of the trains. It is clear that although the Claimant submitted paperwork that he had completed a ninety-day inspection on Switch 1, it was clear that he did not.

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. Given the very serious nature of the Claimant's behavior, which involved dishonesty, 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.