

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43190
Docket No. SG-44081
18-3-NRAB-00003-160675**

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 C. Douglas, for reinstatement to service with compensation for all time lost, including overtime and skill pay, with all rights and benefits unimpaired, and with 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 a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on April 2, 2015. Carrier also violated the time limits contained in Rule 53 when it failed to respond to the initial claim within 60 days. Carrier’s File No. 35-15-0035. General Chairman’s File No. 15-019-BNSF-121-T. BRS File Case No. 15431-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 March 20, 2015, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules by allegedly falsifying BNSF/FRA tests and/or inspections on March 10, March 16, and March 17, 2015. The Investigation was conducted, after a postponement, on April 2, 2015. By letter dated April 24, 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 respond to the claim within the required sixty-day period, and because there is no support for the Carrier's position.

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 that the Carrier failed to comply with Rule 53A when it did not notify the Organization in writing of the reasons for the disallowance of the claim within the required sixty days. Rule 53A states, in part:

"Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) calendar days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The record reveals that the initial claim for the Claimant was filed on June 20, 2015. The Carrier filed its denial on August 20, 2015, which is sixty-one days after the Organization's initial claim. Even though it was just one day, that was a clear violation of Rule 53A.

Since the Carrier has failed to comply with the requirements of Rule 53A by not filing its response in a timely fashion, Rule 53A requires that the claim be sustained as written. Consequently, this claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of May 2018.