

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43195
Docket No. SG-44172
18-3-NRAB-00003-170036**

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 K.A. Crowell, 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 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 June 8, 2015. Carrier’s File No. 35-15-0040. General Chairman’s File No. 15-030-BNSF-129-S. BRS File Case No. 15506-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 May 22, 2015, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules in connection with a May 19, 2015, incident in which the Claimant allegedly misplaced red flags within the overlapping limits of joint track and time. The Investigation was conducted, after two postponements, on June 8, 2015. By letter dated July 2, 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 establishes that the Claimant is guilty as charged, because there is no merit to the Organization's arguments, and because the discipline imposed is 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 meet its burden of proof, because the Claimant did not improperly place the red flags, because the Carrier has 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 evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant was guilty of violating Carrier Rule 6.3.1 on May 19, 2015. Although the Claimant may not have placed the red flags in the proper location, a thorough review of the record makes it clear that there was a great deal of confusion between the Claimant and the roadmaster with respect to where those red flags should be placed. The roadmaster was relatively new to the area and had some confusion about the territory. He testified that "not that I know of, I don't, I don't know the exact milepost of his shunt." The record also makes it clear that the roadmaster incorrectly wrote the working limits of the Claimant.

It is fundamental that the Carrier bears the burden of proof in all discipline cases. In this case, the Carrier has simply failed to meet that burden. As a result, the Board has no choice other than to sustain this claim.

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.