

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43196
Docket No. SG-44173
18-3-NRAB-00003-170037

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 D.A. Klaudt, 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 1-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 29, 2015. Carrier’s File No. 35-15-0039. General Chairman’s File No. 15-028-BNSF-129-S. BRS File Case No. 15500-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 8, 2015, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules by allegedly had failed to provide red flag protection or document the correct information on the working limits form on May 6, 2015. The Investigation was conducted, after a postponement, on May 29, 2015. By letter dated June 25, 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 with a one-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 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 committed fatal procedural due process errors, 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 did not violate the cited rule, 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 procedural arguments raised by the Organization, and we find them to be without merit. A thorough review of this lengthy transcript makes it clear 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 6.3.1 when he had joint authority and

a large number of employees were working within the Claimant's authority. The Claimant was responsible for making sure that the workplace was safe for all of the employees. He failed to place the red flags in a proper manner to mark the working limits of those employees. Moreover, the Claimant was required by 6.3.1 to discuss the joint authority with the other individuals, and he failed to do that.

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 thirty-day record suspension, as well as a one-year period of review. Given the seriousness of the offense here, coupled with the fact that the Carrier actually reduced a three-year period of review to a one-year period of review, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that discipline to the 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.