

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43487
Docket No. SG-44238
19-3-NRAB-00003-170312**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 M.T. Eads, 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 against 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 October 13, 2015. Carrier’s File No. 35-16-0018. General Chairman’s File No. 15-053-BNSF-87-B. BRS File Case No. 15571-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.

At the time of his discipline, the Claimant had two years of service. On October 5, 2015, the Claimant was given notice of an Investigation in connection with the following charge:

“An investigation has been scheduled... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to comply with instructions as issued in Signal Instruction 7.2 when you disabled a crossing at 12th Avenue (DOT 086679S) at MP 84.4 on the Devils Lake Subdivision, Twin Cities Division, allegedly failing to report the proper milepost location to the dispatcher for the crossing protection, at approximately 0900 hours, October 4, 2015, and your alleged failure to notify your supervisor of this incident in a timely manner while you were assigned to gang SSCX0309.”

After a formal investigation on October 13, 2015, the Claimant was found to be in violation of MWOR 1.6 Conduct and SI 7.2 Responding to Crossing Reports and was dismissed from service.

On October 4, 2015, the Claimant oversaw a workgroup that was performing pre-cutover wiring for three grade crossing locations on the Devils Lake Subdivision. The Claimant was tasked with providing protection for the three crossings, including placing a Box 1 on all three crossings. When the Claimant called in his request for a Box 1 to the Dispatcher, he misread the Milepost for the crossing where they were preparing to work. The Claimant provided extra protection by live flagging.

Approximately ten minutes later, BNSF Train 8873 West traversed the crossing, which was still working. After clearing its track warrant, Train 8873 West reported a discrepancy with the Box 1 notification, which had been issued for Milepost 89.4, rather than Milepost 84.4, where the Claimant and his assistants were working. The discrepancy was corrected shortly thereafter. The Claimant failed to notify his supervisor, who called him that afternoon about the error.

The Carrier contends that the discipline is appropriate because the Claimant was a short-term employee who admitted his violation. The Carrier contends that the Claimant carelessly and negligently incorrectly reported the Mileposts to the dispatcher, resulting in a lack of protection for twenty minutes. The Carrier further contends that the Claimant failed to notify his supervisor of the error.

The Organization contends that the Claimant made a simple clerical error when reading the Mileposts to the dispatcher and his infraction does not rise to the level of dismissal. The Organization contends that the Claimant corrected the error as soon as he became aware of it, and he was not required to report a simple clerical error to his supervisor. The Organization contends that the Claimant went above and beyond to provide extra protection and the crew's safety was never compromised.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

The Claimant admitted his violations during the investigation on property. Where there is an admission of guilt, there is no need for further proof. This Board finds that sufficient evidence exists to support the findings against the Claimant. Furthermore, we find no support for the allegations that the Claimant was not afforded a fair and impartial hearing. The Claim is denied.

AWARD

Claim denied.

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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 1st day of March 2019.