

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43492
Docket No. SG-44406
19-3-NRAB-00003-170535

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when the 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.L. Rapp, for 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 a Standard Formal Reprimand with a 1-year review period 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 December 7, 2015. Carrier’s File No. 35-16-0026. General Chairman’s File No. 16-002-BNSF-129-S. BRS File Case No. 15624-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 the dispute, the Claimant was assigned to the position of Signal Foreman. On November 25, 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 in BNSF Corporate Rule on Procurement Cards, and instructions from supervisor concerning items allowed to be purchased for crews for extreme weather when you split the purchase of items into six separate smaller transactions at Cabela’s Retail in East Grand Forks, Minnesota, transaction date of November 19, 2015, while working as foreman on SSCX 0328. The date BNSF received first knowledge of this alleged violation is November 23, 2015.”

After a formal investigation on December 7, 2015, the Claimant was found to be in violation of MWOR 1.13 Reporting and Complying with Instructions and was assessed a Standard Formal Reprimand and a One Year Review Period.

In November 2015, the Claimant and his gang were working on a crossing cutover in North Dakota. During cutover meetings, the gangs were told about the harsh winter conditions approaching the area. On November 19, 2015, the Claimant’s supervisor instructed the Claimant and the other foremen to make a list of cold weather gear that their gangs would need and to purchase the gear. The Claimant went to Cabela’s and spent \$2,772.41 purchasing cold weather gear for his gang. Due to the size of the bill, the Claimant’s purchase was split into six separate transactions on the Carrier’s corporate card. This triggered a transaction report, which caused the Carrier to investigate the Claimant’s purchases. The Claimant’s supervisor said that she directed the foremen to purchase winter accessories, such as facemasks, neck gators, and gloves, but did not authorize the purchase of jackets and pants, as the Claimant had done.

The Carrier contends that the Claimant was never told to purchase a winter wardrobe for his crew, and that his purchases far exceeded the approval given by his supervisor. The Carrier further contends that the Claimant intentionally split the large purchase into several smaller transactions in order to avoid reaching the card's single purchase limit, in violation of the Carrier's rule concerning Procurement Cards. The Carrier contends that the Claimant admitted that he was approved only to buy winter accessories.

The Organization contends that the Claimant's supervisor directed her foremen to purchase cold weather gear to keep their gangs safe in light of the harsh winter conditions that were moving in. The Organization contends that due to the expense of providing his gang with adequate winter protective equipment, the Claimant had the transaction split to remain under the \$500 spending limit, as he had been directed to do in the past when the purchase was time- or safety-sensitive. The Organization contends that the Claimant was running out of time to secure the protective gear that his gang would need the following day. The Organization contends that the Carrier has failed to produce substantial evidence that the Claimant violated the Carrier's rules.

In order to prove that the Claimant violated MWOR 1.13 — Reporting and Complying with Instructions, the Carrier must prove that the Claimant failed to comply with instructions from his supervisor. Based upon the record, the Board finds that the Carrier failed to satisfy its burden of proof.

The record from the investigation demonstrates that the instruction given by the Claimant's supervisor was to purchase gear to keep the gangs safe and warm in the approaching winter weather. Several foremen present at the cutover meeting testified that her instructions were to buy what was needed to be sure that the gangs could be out in the weather all day. On the record before us, this Board is unable to determine exactly what the supervisor instructed the Claimant to purchase. This fact is essential to determine whether the Claimant failed to follow instructions. While the Carrier has presented insufficient evidence to support a finding that the Claimant willfully failed to comply with instructions from his supervisor, he is cautioned to take care in the future to understand and comply with supervisory orders.

The Claimant was also found to be in violation of the Carrier's corporate rule concerning Procurement Cards. During the on-property investigation, the Claimant's

statement that he was unaware of the rule was unrebutted. In addition, there was testimony that splitting large transactions into smaller purchases is a common practice to purchase items in excess of the transaction limit. This Board concludes that the rule was not well-enforced, and the Claimant has not been shown to have knowingly violated it.

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.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 1st day of March 2019.