

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43493
Docket No. SG-44407
19-3-NRAB-00003-170536**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when the 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 T. Harmon, 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 December 11, 2015. Carrier's File No. 35-16-0027. General Chairman’s File No. 16-005-BNSF-121-T. BRS File Case No. 15625-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 was a Signalman in the Carrier's service. On December 3, 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 possession of a firearm in company vehicle 23490, and on company property, on December 3, 2015 at approximately 0800 in Hutchinson, KS while assigned to Gang SSCX0212."

After a formal Investigation on December 11, 2015, the Claimant was found to be in violation of MWOR 1.12 Weapons and was dismissed from service.

After an earlier incident, the Claimant was directed to report to the Carrier's property on December 3, 2015. Before returning home, the Claimant drove BNSF vehicle 23490 to the Carrier's property as requested. Once there, the Claimant was asked if he was in possession of any weapons. The Claimant replied that he had a concealed carry permit and he had a firearm in his duffel bag and a knife on his person. During the on-property investigation, the Claimant admitted that he had carried a firearm in the bed of the Carrier's vehicle.

The Carrier contends that it has shown with substantial evidence that the Claimant was in violation of MWOR 1.12, Weapons, which reads, "While on duty or on railroad property, employees must not have firearms or other deadly weapons, including knives with a blade longer than 3 inches." The Carrier contends that the Claimant admitted placing his personal firearm in the bed of the Carrier's vehicle, which is its property.

The Organization contends that there is no allegation that the Claimant was violent or threatening in any way. The Organization contends that the Claimant was a properly licensed and responsible firearm owner who had his weapon safely locked for transport home. The Organization contends that the Claimant only came to the Carrier's property because he was directed to do so.

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. The Board finds that sufficient evidence exists to support the findings against the Claimant. Further, the Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The Claim is 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 1st day of March 2019.