

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43496
Docket No. SG-44565
19-3-NRAB-00003-170743**

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 K.A. Haugen, for reinstatement to service with compensation for all time lost, including overtime, 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 March 24, 2016. Carrier’s File No. 35-16-0036. General Chairman’s File No. 16-094-BNSF-154-TC. BRS File Case No. 15697-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 dismissal, the Claimant held the position of Signal Maintainer and had been in the Carrier's service for 26 years. On March 18, 2016, 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 involvement in improper possession of signal equipment/materials removed from BNSF property in the rail yard at Rugby, ND and allegedly taken to a private residence at 9103 County Road 15 in Rolette, ND while working as a Signal Maintainer on the Devils Lake Subdivision. The date BNSF received first knowledge of this alleged violation is March 15, 2016."

After a formal Investigation on March 24, 2016, the Claimant was found in violation of MWOR 1.6, Conduct, and MWOR 1.25, Credit or Property, and was dismissed from the Carrier's service.

On March 15, 2016, the Claimant was questioned by Deputy Chief Officer Moody regarding assertions made by a Maintenance of Way employee who had a significant amount of the Carrier's property at his residence. When that employee was questioned concerning who had authorized him to remove BNSF property, he said that the Claimant and another had given him permission to take the material home.

Officer Moody testified that when the Claimant was questioned, he stated that he did not see a problem with someone removing junk signal bungalows that were going to be thrown away. Officer Moody stated that the Claimant later called and recanted his statement, saying that he had instructed the employee to contact the proper personnel before removing equipment. The Claimant denied changing his story, stating that he had given the same version both times.

The Carrier contends that it presented substantial evidence that the Claimant was guilty of violation of MWOR 1.6, Conduct, and MWOR 1.25 Credit or Property. The Carrier contends that the Claimant consciously authorized the employee to take BNSF property and then changed his story after the fact. The Carrier contends that the Claimant was dishonest when he chose to provide conflicting statements. The Carrier contends that the testimony of Officer Moody was reliable.

The Organization contends that the Carrier has failed to satisfy its burden of producing substantial proof of the Claimant's guilt, because the only "evidence" that supported its conclusion was the employee's self-serving statement that the Claimant had given him permission. The Organization contends that several witnesses corroborated the Claimant's statement that he told the employee to get permission elsewhere.

The Organization objected to the Carrier's failure to provide the accusing employee as a witness at the on-property Investigation, as requested by the Organization. Instead, the Carrier produced a written statement from the employee, which could not be cross-examined. The Carrier contends that it was under no obligation to present the employee, who was no longer in BNSF service, as a witness at the Investigation. The Carrier contends that the Organization could have compelled the witness' testimony, if it truly believed that it was necessary to prove the Claimant's innocence.

The Board has carefully reviewed the entire record regarding the Claimant's statements to Officer Moody and finds that while the Claimant could have been more forthcoming, his two statements can be reconciled. In light of the particular facts of this case, the Board finds that the penalty of dismissal is excessive. The Board takes note of the Claimant's many years of service and the unique circumstances of this case. Accordingly, we find that the penalty shall be reduced to a 120-day actual suspension and the Claimant should be reimbursed for time lost beyond that, in accordance with the current practice of the parties. The dismissal shall be expunged from his record.

The claim is sustained only to the extent set forth in the foregoing opinion.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 4

Award No. 43496
Docket No. SG-44565
19-3-NRAB-00003-170743

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 1st day of March 2019.