

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43499
Docket No. SG-44665
19-3-NRAB-00003-180060**

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 J.D. Bloebaum, 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 August 18, 2016. Carrier’s File No. 35-16-0040. General Chairman’s File No. 16-124-BNSF-119-D. BRS File Case No. 15695-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 in this matter was assigned to a Signal Maintainer position in the Carrier's service. On August 12, 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 failure to follow Signal Instructions for Temporarily Taking Grade Crossing warning system Out of Service resulting in an activation failure at MP193.63 near Hickman NE on August 11 2016 at approximately 1428 hours while assigned as a Signal Maintainer on the St Joseph Subdivision."

After a formal Investigation on August 18, 2016, the Claimant was found to be in violation of SI 7.2A Highway Grade Crossing Warning Systems- Disabling and was dismissed from the Carrier's service.

On August 11, 2016, the Claimant was disabling a signal crossing for the Hickman Maintenance of Way Surfacing Crew so that they could perform repair work. The Claimant performed this work correctly earlier in the day, but when called on to disable the crossing a second time, the Claimant forgot to remove the jumpers from the crossing and retest it to confirm that it was functioning properly. During the investigation, the Claimant admitted that he forgot to remove his jumpers, causing an activation failure. As a result, the Claimant left the crossing unprotected. When a BNSF train passed through, the crossing gates did not go down. The train crew reported the incident to the signal operation center.

The Carrier contends that the crossing gates did not come down because of human error. Specifically, the Carrier contends that the Claimant admitted that he failed to adhere to crossing disable procedures as well as failed to remove the jumpers from the crossing. The Carrier contends that the Claimant was properly dismissed from service due to his second serious (Level S) violation during the existing review period.

The Organization contends that mitigating circumstances contributed to the Claimant's error on August 11. The Organization contends that the Claimant was rushed in his work and ran into several problems while working in extreme heat. The Organization contends that the Claimant was honest about his mistake when

questioned by his supervisor. The Organization contends that the Claimant simply made a mistake while attending to the safety-sensitive duties of his job.

The Organization further contends that the Claimant was denied progressive discipline because for ten years, the Claimant did not have a single disciplinary issue. Six days prior to the incident herein, the Claimant had trouble with a switch that led to disciplinary action. The Organization contends that the Claimant was not given the opportunity to properly learn and be counseled on the previous incident. The Organization contends that the Carrier is using two unrelated events that occurred in a short period of time, to justify dismissing the Claimant.

The Carrier has provided substantial evidence to sustain a finding against the Claimant. In a Signalman's line of work, safety at highway grade crossings stands at the forefront of the employees' critical duties that must be performed as part of his normal duties. In this case, the Claimant, perhaps not intentionally, neglected those duties and a very serious event occurred resulting in an activation failure at a grade crossing. While the Claimant admits to getting "side-tracked," this admission is not enough to relieve him of his responsibility to follow proper procedure and ensure that this type of serious incident does not occur.

The Board finds that the Carrier has met its burden of proof in this case and under less unique circumstances the Board would likely uphold the discipline assessed. However, there are some mitigating circumstances that must be considered. The Claimant had nearly twelve years of service with the Carrier with a good disciplinary record. Therefore, the Board is exercising its authority to reduce the discipline in this case to time served. Accordingly, the Claimant shall be returned to service with seniority unimpaired, but without backpay.

AWARD

Claim sustained in accordance with the Findings.

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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.