

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43851
Docket No. SG-45026
19-3-NRAB-00003-180441**

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 R.A. Ball, for compensation for all lost wages, including overtime, with all rights and benefits unimpaired, and 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 Level S, 33-day actual suspension 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 March 20, 2017. Carrier’s File No. 35-17-0016. General Chairman’s File No. 17-027-BNSF-129-SP. BRS File Case No. 15802-BNSF. NMB Code No. 119.”

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.

The Claimant held the position of Signalman in the Carrier's service. On March 6, 2017, 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 Signal Instructions which resulted in a possible human-caused signal activation failure at or near the 10th Street crossing at Enid, OK on March 3, 2017 while assigned to SSCX0158."

After a formal investigation on March 20, 2017, the Claimant was found in violation of SI 7.2 Responding to Crossing Reports, and was assessed a Level S, 33-day actual suspension with a one-year review period.

On March 3, 2017, the Claimant was assigned to provide protection for the signal equipment. After the morning briefing, the Claimant understood that he needed to disable several highway grade crossings related to work to be performed. When the Claimant arrived at the 10th Street Crossing in Enid, Oklahoma, he discovered that the crew had already begun work without the crossing having been disabled, causing the gates to be activated. When the Claimant arrived, cars were going around the gates.

The Claimant searched for the Signal Instructions at the crossing bungalow but could not locate them. He located the SI 7.2A but found it to be out of date. The Claimant raised the crossing gates by jumping the XR relay, which caused all the live or active gates at that location to be disabled, rather than simply the one being worked on.

A work train approached one of the inadvertently disabled crossings and stopped short when the lights and gates did not activate. The crew provided protection for the crossing by flagging vehicle traffic and then reported the incident.

Signal Instruction 7.2, Responding to Crossing Reports states, in part:

“Process flowcharts ... “Disabling crossing warning systems for Maintenance of Way Planned Work”, Signal Instruction 7.2C should be used as a reference when required to disable a crossing warning system. Before any work is performed, an understanding of the highway/railroad crossing circuits is required. Refer to SI 7.10 located in the bungalow, for the proper procedure to disable the crossing warning devices. If written instructions are not available, and you are unsure of the approved process. contact your supervisor prior to disabling the crossing control circuitry.”

The Carrier contends that it has shown with substantial evidence that the Claimant was in violation of SI 7.2A and SI 7.2C, because if the instructions were missing, he was to contact his supervisor, which he admits that he failed to do. The Carrier points out that the Claimant admitted during the investigation that he failed to disable the crossing as instructed. The Carrier contends that the Claimant’s failure to test the unaffected track, as required by SI 7.2, caused the activation failure.

The Carrier contends that the Claimant deliberately chose to disable the crossing without the instructions, causing a human-caused activation failure at the 10th Street Crossing and was, therefore, properly disciplined. The Carrier contends that the actual suspension was warranted and was consistent with BNSF Policy.

The Organization contends that the Carrier has failed to meet its burden of proof because this incident does not meet the criteria for human-caused activation failure because flaggers were provided to protect the crossing.

The Organization that the Carrier failed to consider several important mitigating factors. The Organization contends that the Claimant cannot be faulted for the Gang’s decision to begin work before he arrived. The Organization contends that when the Claimant saw cars driving around the gates, he felt enormous pressure to disable the crossing immediately. The Organization contends that there is no dispute that the proper instructions had not been placed at the bungalow, which is not the Claimant’s responsibility. The Organization points out that the Claimant tried to obtain proper instructions from the internet and when he could not, used his training

to disable the crossing. The Organization contends that the Carrier is speculating as to what caused the other crossings to become disabled.

The Organization contends that the 33-day actual suspension is harsh and excessive. The Organization contends that the Carrier should have taken this opportunity to correct or guide the Claimant, rather than punish him.

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.

In this case, the Claimant admitted that he failed to protect the crossing as instructed and that he failed to contact his supervisor when he realized the instructions were missing or outdated. Where there is an admission of guilt, no further proof is needed.

When the Claimant saw that the instructions were missing and outdated, he was obligated to contact his supervisor, rather than disabling the crossing without instructions. The Claimant's experience did not protect him from unintentionally disabling additional crossings. The passing work train had to provide its own protection at the disabled crossing due to the Claimant's actions. We find no reason to disturb the penalty.

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 4th day of September 2019.