

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43852
Docket No. SG-45027
19-3-NRAB-00003-180442

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.R. Loudermilk, 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 unwarranted and excessive discipline of a Standard Formal Reprimand 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 15, 2017. Carrier’s File No. 35-17-0018. General Chairman’s File No. 17-037-BNSF-121-T. BRS File Case No. 15816-BNSF. NMB Code No. 106.”

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 Signal Maintainer in the Carrier's service. On December 15, 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 properly maintain Signal equipment at Bonds Ranch Road Crossing on the Wichita Falls Sub Division resulting in an activation failure on December 7, 2016 at approximately 2216 hours. The date BNSF received first knowledge of this alleged violation is December 13, 2016.

After a formal investigation on March 15, 2017, the Claimant was found in violation of SI 12.1 Lamp Usage and Replacement Policy. and was assessed a Standard Formal Reprimand with a 1-year review period.

On December 7, 2016, at approximately 10:16 PM, an activation failure was reported at the Bonds Ranch Road Crossing. The Claimant was dispatched to the trouble to make any necessary repairs to the crossing. When the Claimant and his supervisor met at the crossing, they discovered that two of the four mast light bulbs in the flasher units had burned out. Upon further investigation, they observed that the burned-out bulbs were not the standard bulbs recommended in the BNSF Signal Instruction (SI) 12.1– Lamp Usage and Replacement Policy.

The Carrier contends that it has shown with substantial proof evidence that the Claimant replaced the old bulbs with a non-BNSF approved light bulb. The Carrier contends that it determined that the activation failure was the direct result of the improper bulbs failing to flash.

The Carrier contends that it was not unreasonable to infer that the Claimant, who was the Signal Maintainer on the territory, was the one who installed the unapproved light bulbs. The Carrier contends that the Claimant knew or should have known that unapproved light bulbs were being used at this crossing. The Carrier contends that the penalty imposed is neither arbitrary nor excessive.

The Organization contends that the Carrier has failed to produce substantial evidence that the Claimant was responsible for the installation of the unapproved light bulbs. The Organization contends that the Claimant had only been assigned to the

territory for two years at the time of the incident and there was no record of him having changed or replaced the bulbs at this crossing prior to December 7.

The Board finds that the Carrier failed to produce substantial evidence that the Claimant was responsible for having installed the incorrect light bulbs. Although circumstantial evidence may be sufficient in some cases, here the Carrier has not met its burden of proof. There is nothing in the record to tie the Claimant to the improper installation of light bulbs at the Bonds Ranch Road Crossing.

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. 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 4th day of September 2019.