

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43884  
Docket No. SG-45222  
20-3-NRAB-00003-180740**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel 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 D.D. Drum, for reinstatement to service with compensation for all time lost, including overtime 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 August 3, 2017. Carrier's File No. 35-17-0035. General Chairman's File No. 17-059-BNSF-129-S. BRS File Case No.15877-BNSF. NMB Code No.173."**

**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 worked as a signal maintainer in Cape Girardeau, MO. On July 20, 2017, he obtained track authority to travel to Mayes to test the Mayes switch. At approximately 9:20 AM, he took the Mayes switch off power and placed it into manual hand operation. He lined the switch without proper track authority. The dispatcher subsequently contacted him, then reported the incident. The record of the contact with dispatch includes the following exchange:

**“DARREN DRUM: Hello?**

**UNIDENTIFIED: You might want to adjust your track and time a little bit.**

**DARREN DRUM: What’d I do?**

**UNIDENTIFIED: Well, you don’t have time on Mayes; is that the one you’re testing?**

**DARREN DRUM: Shit. Damnit. Son of a bitch.**

**UNIDENTIFIED: I was wondering when you said that, but I thought, “Well, maybe there is a hand throw in there I don’t know about.” I thought you was checking a hand throw.**

**DARREN DRUM: Son of a bitch. I’m busted, ain’t I?**

**UNIDENTIFIED: Well man, yeah, I’d say so probably. We got a block up to protect you right now anyway.**

**DARREN DRUM: Or can I just get time and be okay [phonetic]?**

**UNIDENTIFIED: Well, I can’t really say. I mean, I mean I I gotta or do what I gotta do now. I mean, you know what I’m saying?**

**DARREN DRUM: Shit.**

**UNIDENTIFIED: Just go ahead and request time to cover the switch and uh I’ll go talk to with Chief and let her know I talked to you. We’ll see where it goes.**

**DARREN DRUM: Damnit. Son of a buck.**

**UNIDENTIFIED: I don’t know why I was thinking there was a hand throw in there though when you asked for that, but I should’ve quizzed you I guess.**

**DARREN DRUM: Can we just leave it alone?**

**UNIDENTIFIED:** Well, um, no.

**DARREN DRUM:** Shit. What'd Chief say?

**UNIDENTIFIED:** I don't know. I have to go talk to her. But uh

**DARREN DRUM:** Son of a buck. (TR 15 – 17)”

The Carrier interprets this exchange as an instance of dishonesty because the Claimant attempted to cover up his transgression. It notes that when questioned, the Claimant admitted he did not check his authority before occupying the track. Management determined he could not have taken the switch out of power without fouling the track. After the incident, the Carrier learned the Claimant was on medication: Zanax, a prescription listed as prohibited for safety tasks. It faults the Claimant for failing to report that he was taking this medication and for reporting for duty under its influence. In its view, these factors constitute aggravating circumstances.

The Organization does not dispute these facts, but sees them very differently. It notes that the Claimant struggles with anxiety and became anxious because he knew he was in trouble. In view of his 20 years of employment, the Organization views his dismissal as excessive.

The Board is persuaded by the Organization's arguments to a limited degree. The Carrier accurately assessed fault for the Claimant's failure to report his medication, coming to work under the influence of a prohibited substance and acting outside his track authority. That said, 20 years is clearly a mitigating circumstance. In addition, the record is clear that the Claimant suffered from anxiety which no doubt clouded his judgment and made it difficult for him to divulge information that he feared would be used against him. Under these circumstances, it was remiss for the Carrier to deny him an opportunity to learn from his mistakes and appreciate the importance of sharing job critical information with his employer. In consideration of these factors, we find the discipline excessive.

The Claimant shall be returned to work without compensation, benefits or credit for his time away from BNSF. His return to work shall be subject to medical review by the Carrier's designated medical professional. In addition, at the discretion of the Carrier, the Claimant shall be required to complete EAP counseling. His return shall be under a Level S 30-day record suspension with a one-year review period.

**AWARD**

Claim sustained in accordance with the Findings.

**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 28th day of January 2020.