

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43893  
Docket No. SG-45425  
20-3-NRAB-00003-190170**

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 E.L. Holland, for reinstatement to his former Signal Inspector position, compensation for the difference in pay between the position he was forced to and the Signal Inspector position SINS0237 he held originally, 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, 30-day record suspension with a 1-year review period, along with a 2-year disqualification from holding a Signal Inspector position, 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 November 15, 2017. Carrier's File No. 35-18-0001. General Chairman's File No. 17-080-BNSF-188-SP. BRS File Case No. 15980-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 was a Signal Inspector assigned to verify track circuits and test an East Ramsey signal. After completion, Signal Construction Supervisor Brett Spence received an email from the dispatcher that the equipment the Claimant was responsible for was not working properly. A trouble shooting team went to the location and concluded that the track indication occurred because of weak electrical currents on the circuit the Claimant had worked on. They also stated the track history forms were not filled out, which meant they could not verify whether the Claimant had tested the track circuits. At the location in question, the track length had been increased from 10,652 feet to 14,615 feet and the shunt had been moved. In the assessment of the Carrier, the Claimant should have adjusted the track circuit to a current that fit the new track circuit length. The Claimant received a level S suspension with a one-year review period. In addition, local supervision elected to disqualify him for two years.

The Claimant stated he was not made aware of the track expansion. The Organization pointed out that the form at issue was required only when adjustments were made and there were none. Additionally, it explained that the Claimant consulted a Carrier Officer about the prints (schematics) for the location, which did not show the expansion, and was told that it would be taken care of. In the Organization's view, this case does not rise to level S because no serious safety incident occurred; in its view, only a track which was over-energized would be serious. It also insists that this one incident did not justify disqualification. The record provides no evidence whatsoever of a performance pattern that could support disqualification.

Though the failure of the Carrier to provide updated schematics might have been a mitigating circumstance, it does not operate as mitigation in this case because the Claimant should have tested the circuit regardless of what schematic he was using. Had he done so, he would have surfaced the insufficiency of the current. We are unpersuaded by the Organization's argument that under-energized circuitry is not dangerous, because the performance deficiency was a failure to test the circuit, which could surface either under or over-energized circuitry. In addition, our view is that the track history forms in fact need to be updated. This was a cutover, meaning old equipment was being removed and new equipment installed. We find such changes need to be recorded as part of the track history. It follows that the Carrier has provided substantial evidence of the alleged rule violation.

That said, in addition to the disciplinary penalty for the incident here concerned, the Claimant was disqualified for two years. The record is devoid of any additional evidentiary support for this decision. We do not find that the Claimant's single rule violation renders him unqualified to perform his position. The Carrier is asking the Board to assume additional evidence of poor performance exists because local personnel felt the disqualification appropriate. We decline to make evidentiary assumptions. The disqualification decision has not been shown warranted and is therefore overturned.

The claim is denied as to the level S 30-day record suspension with one-year review period. The claim is sustained as to the two-year disqualification. The Claimant shall be reimbursed for any compensation or benefits lost as a result of this disqualification. The claim is otherwise denied.

**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.