

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43973  
Docket No. SG-44823  
20-3-NRAB-00003-180252**

**The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Montana Rail Link, Inc.**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link, Inc.:**

**Claim on behalf of C.M. Gregie, 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 Article 13, 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 February 1, 2017.**

**General Chairman’s File No. 17-023-MRL-87-B. BRS File Case No. 15806-.”**

**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 assigned as the Livingston Signal Maintainer in Carrier's Signal Department. The Claimant was notified to attend a hearing in a letter dated January 9, 2017, that provided:

**"You are instructed to attend a fact-finding session at the Livingston Yard Conference Room, Livingston, Montana, at 0800 hours on Wednesday, January 18, 2016. This session will be held for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to follow directives and alleged failure to complete your FRA inspections. Montana Rail Link was first advised of this alleged violation on January 3, 2016.**

**The above charges may be violations of FRA Rule 236.102; Signal Test Procedures (TP) 102; Montana Rail Link General Safety Rules, G-1 (li), General Code of Operating Rules 1.6 (1-2), 1.9, 1.13, which governs Montana Rail Link employees per Item 11 in the All Subdivision Special Instructions of Timetable #18.**

**Your past discipline record will be taken into account in assessing discipline, if any. If warranted by the outcome of this fact-finding your employment with Montana Rail Link could be terminated."**

A hearing was held on February 1, 2017. The Claimant was dismissed from service in a letter dated February 28, 2017:

**"As a result of the fact-finding session held at the Livingston Yard Conference Room, Livingston, Montana, at 0800 hours on Wednesday, February 1, 2017, you are hereby notified that effective immediately you are dismissed from the service of Montana Rail Link for violation of FRA Rule 236.102; Signal Test Procedure (TP) 102; Montana Rail Link General Safety Rule G-1 (li), and General Code of Operating Rule 1.6 (1-2), which governs Montana Rail Link employees per Item 11 in the All**

**Subdivision Special Instructions of Timetable #18, for your failure to complete your FRA inspections.**

**Your past service record was taken into account in assessing this discipline. Therefore, the following entry will be made on your personal record:**

**‘February 28, 2017: Dismissed from the service of Montana Rail Link for violation of FRA Rule 236.102; Signal Test Procedure (TP) 102; Montana Rail Link General Safety Rule G-1 (Ii), and General Code of Operating Rule 1.6 (1-2), which governs Montana Rail Link employees per Item 11 in the All Subdivision Special Instructions of Timetable #18, for your failure to complete your FRA inspections.’**

**Arrange to return all Company property and keys to Montana Rail Link. A copy of the fact-finding transcript is included.”**

**The Carrier maintains that there were no procedural defects which void the discipline. The hearing officer was not discussing the merits of the investigation with Carrier supervisors and therefore there was no error.**

**The Carrier continues that the delay in performing testing is unacceptable. Although new maintainers may have a day or two delay in submitting testing results, the Claimant was not new in the position and was seventeen days late – far more than the day or two afforded new employees.**

**The Carrier continues that the Claimant was filling the position because the prior occupant was off work due to an investigation for untimely testing. Grievant was well-aware of the situation with the testing. Moreover, the Claimant had worked in the position previously and was familiar with RailDocs.**

**The Carrier further argues that the Claimant had been properly trained. He acknowledged that his supervisor was approachable and helpful. The Claimant received a significant amount of training and mentoring.**

**The Organization claims a procedural violation that should nullify the discipline. According to the Organization, the hearing officer had an improper conversation with**

witnesses prior to the hearing in the instant matter. The hearing officer's conduct ensured that the hearing could not be fair and impartial. The Claimant's discipline should be rescinded based upon the procedural fault.

The Organization continues that Carrier has chosen to enforce a rule against late filing of test results only against the Claimant and not against numerous other employees who filed late test results. Further, the Carrier contributed to the late filing. The Carrier did not train the Claimant in the use of the RailDocs system. The Claimant was unable to determine when the "rollover" tests should have occurred. When he did determine the due date, and that he was overdue, he immediately contacted his supervisor. Moreover, the Claimant was new to this position and the Carrier's supervisor did not provide a list of required testing. The Claimant was merely given the list from the prior person who occupied the position. Although the Claimant was provided with a testing schedule, there were no due dates and the "rollover" dates were not provided. The Organization concludes that the Claimant was not willfully avoiding doing his work. The Carrier was negligent in supervision. It was excessive to terminate the Claimant from Carrier employ.

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.

This Board has reviewed the evidence in the instant matter. The Claimant is charged with violations related to a failure to timely perform FRA-required testing. The evidence shows that the Claimant committed the cited rule violations. The next inquiry is whether the discipline was an abuse of Carrier discretion. In this matter, this Board finds that the Carrier exceeded its discretion when it terminated the Claimant. The specific facts of the instant matter show that discipline short of termination is appropriate. However, the specific facts do not warrant an award of backpay. Given the nature of the infractions, the Claimant should be reinstated subject to a number of conditions to ensure a successful return to the Carrier.

The terms and conditions of the Claimant reinstatement are: Employee reinstated without retroactive payment of any kind; Seniority and benefits are unimpaired; the Claimant is disqualified as a signal maintainer until successful completion of Carrier's Signal School; Carrier will send the Claimant to Signal School as the earliest available opportunity following the Claimant's return to work; the Claimant will have a six-month probationary period regarding major rules infractions commencing on the date the Claimant returns to work; the Claimant must successfully complete Carrier's return-to-work process, including physical examination and drug screen.

Claim sustained in part and denied in part as detailed above. The Claimant to be returned to work with seniority unimpaired, no award of backpay, and subject to the conditions of this Award.

**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 5th day of March 2020.**