

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44344
Docket No. SG-45550
21-3-NRAB-00003-190429**

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 G.R. Jones, 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 March 5, 2018. Carrier's File No. 35-18-0011. General Chairman's File No. 18-014-BNSF-119-D. BRS File Case No. 15995-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.

Claimant held the position of Signal Maintainer in the Carrier's Signal Department. On February 23, 2018, the Claimant worked with Signal Electronic Technician Daniel Bard performing annual crossing tests at the 13th Avenue Crossing. While placing shunts on the north end of the crossing, the Claimant went outside of his authority limits which prompted the dispatcher on the area to contact the Claimant. In the audio transcript of the conversation between the dispatcher and the Claimant, the Claimant confirmed that he was foul of the track.

On February 23, 2018, 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, when you were allegedly foul of the main track without proper authority on February 23, 2018."

After a formal investigation on March 5, 2018, the Claimant was found in violation of MWOR 6.3.1, Track Authorization, and was dismissed from the Carrier's service.

In a letter dated May 25, 2018, the Organization appealed the Carrier's discipline. The Carrier responded to and denied the appeal. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Carrier contends that it has shown with substantial evidence that the Claimant violated MWOR 6.3.1. The Claimant did not have one of the listed protections to permit him to occupy the area of track where he performed his crossing test. The Carrier contends that the Claimant admitted that he did not have authority to occupy the location where he performed his crossing test. The Carrier contends that where there is an admission of guilt, there is no need for further proof.

The Carrier contends that when this discipline issued, the Claimant was still in the active review period for a previously received Level S suspension. The Carrier contends that the penalty of dismissal was appropriate.

The Organization contends that the Claimant felt a great deal of pressure to finish his testing quickly and that this should mitigate his error. The Organization contends that the penalty of dismissal is excessive under all the circumstances of the case.

This Board finds that sufficient evidence exists to support the findings against the Claimant. The Claimant admitted to the dispatcher that he had exceeded his limits. In addition, due to Claimant's prior discipline, it cannot be said that the penalty of dismissal was arbitrary or excessive.

AWARD

Claim denied.

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 6th day of January 2021.