

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44358
Docket No. SG-45730
21-3-NRAB-00003-190516**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 M.T. Corcoran, for compensation for all lost wages, including overtime, with all rights and benefits unimpaired, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 54 and 56, when it issued the harsh and excessive discipline of a Level S, 40-day actual suspension, with a 3-year review period 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 April 27, 2018. Carrier's File No. 35-18-0017. General Chairman's File No. 18-023-BNSF-20-C. BRS File Case No. 16048-BNSF. NMB Code No. 119.”

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 to the position of Signal Inspector headquartered in Chicago, Illinois, under the Carrier's Signal Department. On April 18, 2018, Signal Supervisor John Ude received an email from BNSF's Deputy Chief of Police, Grant Bidwell, indicating that the crossing gates at the Prairie Avenue Crossing on the Chicago Subdivision fell well after the train had entered the crossing.

The Claimant was performing relay tests on the Prairie Avenue Crossing at the time, but he had not obtained any track authority from the dispatcher or control operator.

On April 19, 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, in connection with your alleged failure to establish authority or protection and follow crossing disable procedure while testing relays on April 18, 2018 at approximately 1300 at Prairie Ave at Chicago Sub MP 12.35."

After a formal investigation on April 27, 2018, the Claimant was found in violation of SI 7.2A Highway Grade Crossing Warning Systems - Disabling, TP-234 Highway Grade Xing Warning and TP-106 All Systems – Relays, and was assessed a 40 day Actual Suspension with a Three-Year Review Period. A letter to this effect dated May 25, 2018, was mailed to the Claimant and received on May 31, 2018. Tracking information supplied by the Carrier shows that the package was accepted at the USPS facility on May 29, 2018.

In a letter dated July 18, 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 produced substantial evidence that the Claimant was in violation of SI 7.2A, TP-234 and TP-106 which required the Claimant to obtain protection over all tracks over the crossing prior to disabling any portion of the crossing warning system. The Carrier contends that the Claimant does not dispute that he did not obtain protection prior to performing relay testing.

The Carrier contends that it complied with Rule 54 of the parties' Agreement because after the investigation on April 27, 2018, the Carrier's decision was rendered on May 25, 2018 and the letter was mailed thereafter. The Carrier contends that it cannot be responsible for the USPS late delivery of the letter to the Claimant on May 31, 2018.

The Organization contends that the Carrier's decision was not rendered within 30 days following the investigation on April 27. The letter dated May 25, 2018, was accepted at the USPS facility on May 29, 2018 and received by the Claimant on May 31, 2018. Therefore, the Organization contends, the Carrier failed to comply with Rule 54, as that rule has been interpreted by previous Boards, and thus, the claim must be allowed as presented on the procedural defect without reaching the merits.

"Rule 54- INVESTIGATIONS AND APPEALS

D. A decision shall be rendered within thirty (30) calendar days following the investigation, and written notice thereof will be given the employee, with copy to local organization's representative..."

With respect to the merits of the claim, the Organization contends that the Claimant was new to his position and that the penalty was harsh and excessive.

The procedural argument raised by the Organization must be addressed first. Over the years, boards have disagreed as to whether the date of mailing or the date of receipt is controlling when the Carrier denies a claim. In Third Division Award 42698, this Board reviewed the precedent and ultimately determined that the operative date was the date on which the denial of a claim was received, not mailed.

Here, the issue does not concern the denial of the claim, but the issuance of the disciplinary decision. And although the Carrier's disciplinary letter to the Claimant is dated within the 30 day limit, the tracking information shows that it was not received at a USPS facility until May 29, clearly more than 30 days after the Investigation on

April 27, 2018. Even if this Board were to accept the Carrier's assertion that the disciplinary letter's mailing date, not the receipt date, should be controlling, the Carrier has not presented evidence showing that the 30-day requirement was met under either theory. Therefore, the Board finds that the Carrier failed to render its disciplinary decision within 30 days following the investigation and thereby, was in violation of Rule 54. The claim must be sustained.

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 6th day of January 2021.