

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44360
Docket No. SG-45732
21-3-NRAB-00003-190592**

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 A.D. Hathcock, 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 July 17, 2018. Carrier's File No. 35-18-0020. General Chairman's File No. 18-033-BNSF-121-T. BRS File Case No. 16070-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 was assigned to the position of Signal Maintainer headquartered on the Longview Subdivision, in the Carrier's Signal Department. On July 7, 2018, the crossing at Mile Post 36.154 on the Longview Subdivision was malfunctioning. The Claimant, who was the on-call Signal Maintainer, responded. The next day, a private citizen called in and stated that BNSF Train 6856 proceeded through the crossing and the crossing gates did not come down.

Upon investigation, the Claimant's jumpers were found attached to the crossing terminal, disabling the crossing. Investigators were unable to find a Crossing Disabling Sheet or Trouble Ticket inside the bungalow. When the Claimant was questioned, he admitted that he left the jumpers by mistake.

On July 10, 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 follow proper crossing disabling procedures on July 7, 2018 at approximately 1650 hours, resulting in a human caused activation failure on the Longview Sub-division at crossing Hwy 62 near MP 36.15.

After a formal investigation on July 17, 2018, the Claimant was found in violation of SI7.2A, Highway Grade Crossing Warning Systems-Disabling, and was dismissed from the Carrier's service.

In a letter dated September 13, 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 presented substantial evidence proving the Claimant's guilt. The Carrier points out that the Claimant admitted that he failed to follow proper testing procedures, resulting in a human-caused activation failure. The Carrier contends that numerous awards determined that where there is an admission of guilt, there is no need for further proof.

The Carrier contends that the penalty was consistent with Appendix B of the Carrier's Policy for Employee Performance Accountability (PEPA), which identifies this violation as a standalone dismissible offense.

The Carrier contends that there was no violation of the Claimant's due process rights, as previous boards have found that no procedural error occurs when one person plays multiple roles.

The Organization contends that the Claimant was denied a fair and impartial hearing, as required by Rule 54, because the Claimant's manager served as the Charging Officer, was involved in the gathering of evidence of the case, and signed the Dismissal Letter. The Organization contends that it was improper for the Carrier official to fill multiple administrative roles in the discipline process.

The Organization contends that the circumstances surrounding the Claimant's admitted error should be considered: the Claimant traveled a great distance in inclement weather to respond to the trouble call. When he arrived, there was a great deal of backed-up traffic at the crossing, placing additional pressure on the Claimant.

The Organization contends that the penalty of dismissal was harsh and excessive. The Organization contends that the Claimant was truthful about his error when questioned and that he should have assessed a coaching to learn from the mistake.

The Organization has raised a procedural objection, asserting that the Claimant was denied a fair and impartial hearing as guaranteed by Rule 54 of the parties' Agreement. The Carrier does not deny that one Carrier officer gathered evidence on the day of the incident, served as an observer during the investigation, and signed the letter of dismissal.

The Board has considered the Organization's procedural objection and finds it to be without merit. It is not uncommon in the railroad industry for management officials who participated in preliminary matters to participate in the investigation. In this case, the objected to official did not serve as the Conducting Officer; he was merely an observer at the investigation. As such, there is no evidence that one person served as "prosecutor, judge, and jury," as alleged by the Organization. The awards cited by the Organization addressed a charging official serving as the Hearing Officer, which did not happen here.

With respect to the merits, the Claimant has admitted his error. While such honesty is commendable, his admission obviates the need for further proof. The Carrier has shown with substantial evidence that the Claimant violated SI 7.2A. Furthermore, his error caused an activation failure, allowing a train to pass by a crossing unprotected. Under the Carrier's PEPA this is a Stand-Alone Dismissible Violation. The penalty was neither harsh nor excessive considering the potential impact of the Claimant's error.

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.