

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44361  
Docket No. SG-45733  
21-3-NRAB-00003-190656**

**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 J.D. Arellano, for reinstatement to service with 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, when it issued the harsh and excessive discipline of dismissal 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 August 20, 2018. Carrier's File No. 35-18-0025. General Chairman's File No. 18-048-BNSF-188-SP. BRS File Case No. 16066-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 held the position of Signal Maintainer in the Carrier's Signal Department headquartered in Lyle, Washington. On July 31, 2018, the Claimant was performing a quarterly electric lock test at Mile Post 85.7 on the Fallbridge Subdivision. The Claimant was contacted by Electronic Technician (ET) Schmidt and asked if he was working at the electric lock location. The Claimant acknowledged that he was, and the ET told him that his limits did not cover the electric lock. The Claimant immediately removed the shunt he had applied to the track to test the timing of the electric lock. ET Schmidt advised the Claimant to not say anything about the incident and keep it to himself. Two days later, ET Schmidt told Signal Supervisor Walters about the incident.

On August 3, 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 alleged violations that occurred on or about 1145 hours, on July 31, 2018, at or near MP 85.7, on the Fall bridge Subdivision, near Lyle, Washington, resulting in failure to report and were out of limits, while you were working as a Signal Maintainer, Gang I.D. SMTR-0405. Alleged violations include but are not limited to failure to report and being outside your assigned limits."**

After a formal investigation on August 20, 2018, the Claimant was found in violation of MWOR, 1.6, Conduct; MWOR, 6.3.1 Track Authorization; and MWOR 10.3.4, Record Track and Time, and was dismissed from the Carrier's service.

In a letter dated November 7, 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 did violate the rules as charged. Although the Claimant stated that he believed that he was working within his limits, the Carrier contends that the evidence

clearly shows that he was not within his limits and he should have known that was true.

In addition, the Carrier contends that the Claimant was dishonest when he agreed with another employee to not disclose the incident to management. The Carrier contends that the Claimant's dishonesty alone is sufficient reason to uphold his dismissal.

The Organization contends that the Claimant acknowledged and apologized for his error. The Organization contends that the Claimant sought advice from a senior employee who gave him bad advice. The Organization contends that when the Claimant was questioned about being outside his limits, he initially said he could not recall, but was not dishonest.

The Organization contends that the penalty of dismissal is harsh and excessive, and clearly punitive, rather than corrective. The Organization contends that the Claimant was subject to disparate treatment because the ET involved in the incident was not dismissed.

The Carrier has shown with substantial evidence that the Claimant was working outside of his limits and was initially dishonest about it. The Claimant admitted during his testimony that he was outside his limits. Where there is an admission of guilt, there is no need for further proof. Additionally, the Claimant does not suggest that he admitted his error to his supervisor when questioned. He said he could not recall, which was dishonest.

The charge of Dishonesty is a Standalone Dismissible Offense on the Carrier's Policy for Employee Performance Accountability ("PEPA"). Numerous Boards have held that dishonesty constitutes sufficient reason for dismissal irrespective of the employee's seniority or past record. Leniency with regard to the penalty is the prerogative of the Carrier, not this Board.

### **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.

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**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 6th day of January 2021.**