

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44662
Docket No. SG-46265
22-3-NRAB-00003-200923**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(BNSF Railway Company (Former Burlington Northern
(Railroad 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 R.D. Cottrell, 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 2, 2019.” Carrier's File No. 35-19-0029. General Chairman's File No. 19-055-BNSF-33-K. BRS File Case No. 16263-BNSF. NMB Code No. 106.”

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.

At the time this dispute developed, the Claimant was assigned to a Signalman position headquartered in Oklahoma City, Oklahoma. In his position, the Claimant was periodically entitled to expense breakfast, lunch, and dinner while staying away from his headquarters in company provided lodging.

After reviewing the Claimant's expense report, his supervisor questioned some of the submitted expenses, so he called the Claimant for an explanation. While some expenses were explained, the supervisor directed the Claimant to get others corrected. Several days later when the supervisor checked the Claimant's expenses again, he found that they had not been corrected.

On June 07, 2019, 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 dishonesty when you submitted an expense report claiming meals on May 2, 2019 as a result of a work related overnight stay in Perry, OK and the subsequent conversation with Ryan Stethem on June 6, 2019. The date BNSF received first knowledge of this alleged violation is June 6, 2019.

After a formal investigation on July 2, 2019, the Claimant was found in violation of MWOR 1.6, Conduct, and was dismissed from the Carrier's service. By letter dated September 5, 2019, the Organization presented a claim to the Carrier which was denied by letter dated October 31, 2019. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that it has presented substantial evidence of the Claimant's violation because he admitted to his oversight. The Carrier contends that the Claimant submitted fraudulent expenses that he was not entitled to be reimbursed for, and was, therefore, dishonest.

The Carrier contends that its Notice of Investigation was sufficient to apprise the Claimant and his representatives of the charges against him. Further, the

Carrier contends the Claimant was provided a fair and impartial hearing and that the investigation hearing was timely.

The Carrier contends that the penalty was consistent with BNSF's Policy for Employee Performance Accountability ("PEPA"), which classifies this type of violation as Stand Alone Dismissible. The Carrier contends that the assessed discipline was not excessive, arbitrary, or unwarranted.

The Organization contends that the Carrier's Notice of Investigation was deficient and deprived the Claimant of a fair and impartial investigation. The Organization contends that the Carrier failed to comply with the notice requirements set forth in Rule 54 of the parties' Agreement. The Organization also contends that the Notice of Investigation was untimely, coming more than 15 days after the Carrier's first knowledge of the basis for the charges.

With respect to the merits, the Organization contends that the Claimant was entitled to be reimbursed for the claimed expenses under Rule 14 of the Agreement. The Organization contends that the Carrier has failed to meet its burden of proving that the Claimant was dishonest or intended to defraud his employer.

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.

The Board finds that the Carrier has met its burden of proving the charges against the Claimant with substantial evidence. Due to unique circumstances specific to the facts of this case, the Board finds the penalty of dismissal to be excessive. Therefore, the Board is exercising its authority to reduce the discipline in this case to time served. Accordingly, the Claimant shall be returned to service with seniority unimpaired, but without backpay. The Organization's procedural objections were considered but they do not require a different result.

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 15th day of December 2021.