

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44805
Docket No. MS-46647
23-3-NRAB-00003-210643

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

(Melanie Friend (*Pro Se*))

PARTIES TO DISPUTE: (
(BNSF Railway Company)

STATEMENT OF CLAIM:

“1. Carrier acted in an arbitrary, capricious and unjust manner as well as violated the Agreement between the parties when by letter dated August 24, 2020 it dismissed Ms. Melanie Friend, hereinafter referred to as Claimant, from employment with BNSF.

2. In view of the foregoing arbitrary, capricious and unjust action of the Carrier, it shall now be required to remove all references of Claimant’s charges, investigation, and discipline assessed from Claimant’s personnel record and return her to service immediately with full back pay and all other rights unimpaired.”

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.

On July 12, 2020, the Claimant was working as a control operator in Galesburg, Illinois. At the time of the incident in question, the Claimant had been

employed by the Carrier for just over five years. At 11:03:45, the Claimant placed blocks on the Departure 6 Track where a Mechanical Employee, Mr. Cudd, needed to work. She placed blocks on the south switch and north switch governing entry into Departure 6 Track.

An hour later, at 12:13:47 PM, in order to accommodate the use of the north switch, the Claimant needed to adjust the blocking by “moving” the north block. In order to accomplish this without removing Mr. Cudd’s protection, the Claimant needed to put another block “over” the existing block, then remove the previous block. The new block included Departure 6 Track and the North R&D Switch but did not include the south switch. Next, the Claimant removed the existing block 129-38, leaving Mr. Cudd with no protection on the south end of Departure 6 Track.

At approximately 1500 hours, the second-shift Yard Control Operator notified Terminal Trainmaster Shawn Webb that a Mechanical Employee was working on the Departure 6 Track without proper protection. When Mr. Webb saw there was no block on Departure 6 Track, he immediately put a block on the track.

On July 16, 2020, 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 misconduct and carelessness for the safety of others, when failing to comply with instructions issued by supervisor, failing to properly apply track blocks and provide blue signal protection for Mechanical employee near Galesburg Yard, at approximately 1214 on July 12, 2020, while working as a Control Operator.

After a formal investigation on August 7, 2020, the Claimant was found in violation of General Code of Operating Rules (“GCOR”) 1.6, Conduct, and Train Dispatcher, Operator, Control Operator Manual (“TDOCOM”) 40.4.2 Blue Signal Protection of Workmen, and was dismissed from the Carrier’s service.

In a letter dated September 18, 2020, the Claimant’s Organization appealed the Carrier’s discipline. The Carrier responded to and denied the appeal in a letter dated November 17, 2020. 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 of the Claimant's violation of Rules 1.6, Conduct, and Rule 40.4.2, Train Dispatcher, Operator, Control Operator Manual Blue Signal Protection of Workmen. There is no dispute that the Claimant removed the block protecting the south end of Departure Track 6 and did not reapply it, leaving an employee unprotected. The Claimant presented no evidence to the contrary. In light of the Claimant's admission, the Carrier contends it need not provide further proof.

The Carrier contends that the Claimant is a danger to other employees, as this is the second time she has been dismissed for failing to provide proper protection to an employee working on the track. Although the Claimant was reinstated to her former position, she made nearly the same error in the instant case.

The Carrier contends that it has shown that the Claimant was guilty as charged and that the assessed discipline was not arbitrary, capricious or unjust. The Carrier contends that the discipline assessed was proper and in accordance with the Carrier's discipline policy. This was not the Claimant's first failure to protect men and equipment by failing to provide proper blocking. She committed a serious violation and her dismissal was warranted.

The Claimant contends that the Carrier has not proven that she improperly removed the block, as she does not believe she would have removed it without approval. The Claimant admits that she had to remove a previously issued block and recalls unblocking and reversing several switches. The Claimant contends that if the Carrier had addressed the incident earlier or held the investigation sooner, she would have been able to say specifically what she had done. She is sure that she put up another block before removing the initial block because she always worked with safety being her first objective.

The Claimant contends that she was denied a fair and impartial hearing because the screens she worked with were in color, but the exhibits were in black and white, making it difficult for her to read. Furthermore, the Claimant contends that coworkers made comments to her regarding her continued employment even before she was given notice of the Investigation. At the investigation, the Hearing Officer overruled objections regarding the lack of precise charges and testimony appearing rehearsed.

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.

Here, the Carrier presented evidence that the Claimant removed blocks that were protecting a Mechanical Employee without applying new blocks to prevent entry to the track he was working on. The Claimant denied that she left the worker unprotected. When a determination regarding the credibility of witnesses has been made, it is the tradition of this Board to defer to the judgment of the Hearing Officer who observed the witnesses firsthand, unless there is a compelling reason not to do so. The Hearing Officer found that the Carrier presented substantial evidence of Claimant's violation and was not persuaded by Claimant's denials. We find no reason to disturb that finding.

This Board has reviewed the procedural arguments raised by the Claimant, and we find them to be without merit. A review of the transcript confirms that the Claimant was provided a fair and impartial hearing.

The Carrier has proved the Claimant's violations with substantial evidence. Safety is paramount in this industry and violation of safety rules are typically met with significant discipline. Under all the circumstances, we find that Claimant's dismissal was not 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 28th day of October 2022.