

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45258
Docket No. SG-47477
24-3-NRAB-00003-220208**

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 Corporation

STATEMENT OF CLAIM:

“Claim on behalf of T.D. Heaton, 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 September 30, 2020. Carrier’s File No. 35-21-0001, General Chairman’s File No. 20-133-BNSF-154-TC, BRS File Case No. 5258, NMB Code No. 103.”

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 began in the Carrier’s service on April 3, 2006. At the time of the incident that led to his discipline, he was assigned as a Signal Maintainer in Minnesota. On September 14, 2020, the Claimant was working on crossings in the Detroit Lakes

area on the Staples Subdivision. Shortly after the Claimant finished his shift and arrived home, the call center notified the Claimant of a false activation at County Road 54 (MP 207.8). Box 2 protection had been applied by the Dispatch Center. The Claimant arrived at the scene and took Track 3 on Main 2 out of service. He did not get additional track authority from the dispatcher.

After troubleshooting and believing that he had returned the crossing to service, the Claimant released his authority back to the dispatcher, voiding the Box 2 protection. However, the Claimant did not return the GCP 4000 to service at the crossing and did not perform a shunt test.

The Claimant returned home again and was contacted approximately 50 minutes later because BNSF Train Crew 5928 reported an activation failure at the crossing where the Claimant had worked earlier. The gates did not come down and the lights were not working as the train approached. The crew stated that a car had driven over the crossing right in front of them with no warning that the train was nearby because the crossing was in a “quiet zone.” The dispatcher placed a Box 1 protection on the crossing.

The Claimant was the first to arrive at the crossing and was joined by his supervisor, Ryan Skarhus, and a signal inspector. Upon inspection, the supervisor determined that the activation failure was likely human-caused. The Claimant was removed from service pending investigation.

On September 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 involvement in the highway grade crossing activation failure at CSAH 54 MP 207.8 on the Staples Subdivision around 1956 hours on September 14th 2020.

After a formal investigation on September 30, 2020, the Claimant was found in violation of SI 7.2A, Highway Grade Crossing Warning Systems - Disabling, SI 7.2B, Crossing Warning System Malfunction Response Flow Chart, and SI 7.2, Highway Grade Crossing Warning Systems - Responding to Crossing Reports, and was dismissed from the Carrier's service.

In a letter dated January 4, 2021, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated March 5, 2021. 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 its rules. The Carrier contends that the Claimant admitted that he failed to follow all the steps for restoring the crossing to service after removing the jumpers. The Carrier contends that the Claimant knew that he needed to restore the GCP 4000 to service and to shunt the track to ensure that the crossing was operating properly. When the Claimant released his authority back to the dispatcher, he must have believed that he had satisfied all the requirements of his duties.

The Carrier contends that Signal employees are expected to follow the Signal Testing Procedures to minimize the risk of activation failures. The Claimant admitted that he did not follow all the Procedures, and thus, violated numerous provisions in Signal Instruction 7.2. The Carrier contends that the Claimant failed to create a crossing disable ticket in Remedy prior to working on the crossing and did not fill out a Crossing Disable Checklist. The procedures also require that employees must verify that all shunts and/or jumpers have been removed prior to returning the crossing to service. The Carrier contends that the Claimant admitted that he knows to shunt tracks after disabling the crossing, but simply forgot to do so here.

The Carrier contends that when BNSF Train 5928 approached the crossing in a quiet zone, it was prohibited from sounding its horn, so motorists and pedestrians would not be warned of an approaching train if the crossing was disabled.

The Carrier contends that the penalty of dismissal was appropriate, given the number of mistakes that the Claimant made, and the potential consequences of those errors. BNSF Train 5928 was nearly involved in a vehicle collision due to the crossing not being put back into service by the Claimant. The Carrier contends that the Organization's assertion that the Claimant's lack of training should serve as a mitigating factor should be disregarded, as the Claimant knew to follow SI 7.2, but failed to do so. For the same reason, the pressure that the Claimant felt due to the traffic at the crossing does not excuse his errors. The penalty of dismissal was consistent with the Carrier's Policy for Employee Performance Accountability ("PEPA").

The Organization contends that the Carrier has proven nothing more than that the Claimant made a mistake, and it cannot show that the Claimant's actions were intentional or the result of conscious or reckless indifference.

The Organization contends that it was later learned that the Claimant was unaware that recent software changes to the GCP 4000 had taken place at this crossing which kept the crossing disabled after the jumpers had been removed. The Organization contends that at other crossing locations with the same equipment, removal of disabling jumpers restores the crossing system to operation, but unbeknownst to the Claimant, this was not the case at CSAH 54. The Organization contends that the Carrier failed to provide appropriate training to the Claimant of the change in software.

The Organization contends that the Carrier failed to give appropriate weight to the mitigating circumstances that led to the infraction. In addition, the Claimant had more than 14 years of dedicated service to the Carrier. The Organization contends that the PEPA Policy is meant to be progressive, and the Claimant had no prior discipline for an activation failure. The Organization contends that the Carrier has imposed lesser discipline than dismissal for similar infractions.

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 Claimant has admitted that his omissions were responsible for the highway grade crossing activation failure at MP 207.8 on the Staples Subdivision on September 14, 2020. The Claimant failed to return the GCP 4000 to service and did not test the crossing by shunting the track, leading to the crossing remaining disabled. The Claimant's admission of guilt precludes the need for further proof.

The remaining question is the appropriateness of the penalty. The Carrier contends that the Claimant's error could have led, and nearly did lead, to a catastrophic event. However, the Organization's point is well-taken that the Claimant's error has not been shown to be the result of intentional action and the Carrier admitted during the Investigation that the Claimant had not been trained on the change in the GCP 4000 software. Due to the lack of training, the Claimant had no reason to understand that the GCP 4000 now had to be manually returned to service, as well. However, he did fail to shunt the track which would have alerted him that the crossing was still not activated.

The PEPA characterizes a Level S, or Serious, violation, as “A violation of any work rule or procedure that is intended to protect employees, the public, or others from a potentially serious injury of fatality.” This describes the Claimant’s violation. On the other hand, PEPA describes a Standalone Dismissible Offense as “conscious or reckless indifference to personal safety or the safety of others or the public that could result in serious injury to another employee, or the general public.” The Carrier has failed to show that the Claimant was consciously or recklessly indifferent to safety. He has no history of safety violations.

In light of these factors and the Claimant’s many years of unblemished service with the Carrier, the Board finds that the discipline assessed is excessive. Accordingly, the Board directs that the discipline be modified to a 30-day actual suspension with a one-year review period and the dismissal shall be expunged from his record. The Claimant shall be reimbursed for time lost beyond the period of suspension and reinstated with seniority and benefits unimpaired.

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 14th day of May 2024.