

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

**Award No. 28581
Docket No. 48433
17-1-NRAB-00001-150229**

The First Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers and Trainmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

“It is hereby requested that Engineer D. L. Crawford’s discipline be reversed with seniority unimpaired, requesting pay for all lost time with no offset for outside earnings, including the day(s) for investigation with restoration of full benefits, and that the notation of Dismissal be removed from his personal record, resulting from the investigation held on September 30, 2014.”

FINDINGS:

The First 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.

By notice dated October 13, 2014, the Claimant was directed to attend a formal Hearing on charges that the Claimant allegedly had failed to comply with his track warrant and exceeded his train’s authority, allegedly failed to broadcast an

emergency, allegedly failed to properly protect a reverse move, and allegedly was indifferent to duty when he provided false post-incident statements in connection with an incident on September 26, 2014. The Investigation was conducted, after a postponement, on October 30, 2014. By letter dated November 14, 2014, the Claimant was notified that as a result of the Hearing, he had been found guilty as charged and was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence conclusively establishes that the Claimant is guilty as charged, because the Organization's arguments are without merit, and because the discipline assessed was appropriate in light of the seriousness of the violations. The Carrier also asserts that any award of backpay should be offset by any outside earnings while the Claimant was dismissed. The Organization contends that the instant claim should be sustained in its entirety, without any offset of outside earnings, because the Carrier failed to afford the Claimant a fair and impartial Investigation, because the Carrier failed to establish substantial evidence of wrongdoing by the Claimant, and because the discipline imposed was unwarranted.

The Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The Claimant was guaranteed all of his due process rights throughout the Investigation.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating several Carrier rules when he exceeded his authority and failed to properly announce via radio that he was on a portion of track that was not authorized for his movement. The Claimant also then shoved the train in reverse without proper protection. He subsequently did not come forward with the incident until he was faced with evidence of his wrongdoing. The Carrier properly found the Claimant guilty of GCOR 1.6, which requires employees to be honest as well as not careless of the safety of themselves or others. Moreover, the Claimant was negligent, which is also prohibited by the rule.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was terminated by the Carrier, and one of the major reasons was his dishonesty and failing to promptly and properly report this incident. The Claimant admitted his wrongdoing at the hearing. The Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant for these serious offenses, including the offense of dishonesty. Therefore, the claim must be denied.

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 First Division**

Dated at Chicago, Illinois, this 25th day of October 2017.