

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

**Award No. 28584  
Docket No. 48436  
17-1-NRAB-00001-150232**

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 R. M. Roach’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 December 22, 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 December 16, 2014, the Claimant was directed to attend a formal Hearing on charges that the Claimant allegedly had been dishonest in making a fraudulent statement of work events that occurred on December 8, 2014. The Investigation was conducted, as scheduled, on December 22, 2014. By letter dated January 5, 2015, 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. 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 establish substantial evidence of wrongdoing by the Claimant, because the Carrier failed to submit any evidence showing intent or motive, and because the discipline imposed was arbitrary, capricious, and wholly unreasonable.

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 not totally honest when he reported an incident involving the Trainmaster in an email that he sent to the General Chairman of his Organization and to Carrier supervisors. The Claimant was attempting to report what he considered to be a safety violation and made some assumptions that were not accurate about the actions of the Trainmaster. The Claimant complained that he could have been "knocked down" and the actions of the Trainmaster could have "caused serious injury or death to myself." The Claimant clearly overstated the incident and misrepresented a few facts which support the finding of guilty of violating Rule 1.6, which prohibits dishonesty.

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.

Although the Claimant in this case was clearly guilty of filing a report that was less than accurate and somewhat dishonest, the Board is of the belief that the Claimant's actions did not rise to the level to support discharge. The Claimant in this case has worked for the Carrier for 20 years, having been hired in 1997. Although his discipline record is not perfect, it appears that he has worked successfully for the Carrier during those two decades. Dishonesty is a very serious

offense which often leads to discharge because an employer cannot rely on that employee's statements and often worries that that employee will not be honest again in the future. In this case, the Claimant's actions did not have much of an impact other than hurting the feelings of the Trainmaster and others. Therefore, the Board finds that the Carrier's action in terminating the Claimant's employment was without just cause and was arbitrary and capricious. However, there was a basis for the issuance of some discipline to this Claimant. Therefore, we order that the Claimant be reinstated to employment, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension for his wrongdoing.

**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 First Division**

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