

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 28586
Docket No. 48438
17-1-NRAB-00001-150234

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 S. J. Schott’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 October 24, 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 August 6, 2014, the Claimant was directed to attend a formal Hearing on charges that the Claimant allegedly had been careless of the safety of himself and others in connection with a July 27, 2014, incident in which the Claimant allegedly threw a bag of trash from the locomotive. The Investigation was conducted, after four postponements, on October 24, 2014. By letter dated

November 13, 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 the Claimant was afforded a fair and impartial Hearing and all of his due process rights, because substantial evidence conclusively establishes that the Claimant is guilty as charged, 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 although it is uncontroverted that the Claimant discarded a bag of trash onto the ground next to his locomotive, the circumstances of the incident and the Claimant's length of service do not support the ultimate sanction of dismissal, which was unreasonable and extremely excessive.

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

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 violated several Carrier rules when he threw trash off of a locomotive and kicked it across the yard. The Claimant's action violated GCOR Rules 1.6, 1.3.1, 1.24, and 1.5.1. The Claimant admits that he threw the trash off the train and stated that he was frustrated with how filthy the area was when he came to work.

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. This 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 issued a dismissal. The Claimant did have a previous Level S within the last four months, and so this was his second serious violation in a very short period of time. However, this Claimant has worked for the Carrier since 2001 and he has been an engineer since 2005. Although the Claimant was guilty of another serious offense, the Board must find that the Carrier acted

unreasonably and arbitrarily when it terminated the Claimant for throwing trash off of his engine. The Claimant clearly placed himself in a position where he should be issued severe discipline, but the Board finds that there was simply no just cause for discharge. Consequently, 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.

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.