

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

**Award No. 28587
Docket No. 48439
17-1-NRAB-00001-150235**

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 L. D. LaRue’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 February 17, 2015.”

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 January 14, 2015, the Claimant was directed to attend a formal Hearing on charges that the Claimant allegedly had laid off on call as an engineer on January 12, 2015. The Investigation was conducted, after a

postponement, on February 17, 2015. By letter dated March 9, 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 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 not warranted.

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 Carrier rules when he received a push notification and failed to protect his assignment on January 12, 2015. The Claimant was ordered for service and did not accept that call. He was considered to be a layoff on call. The Claimant's excuse was that he was sick and could not come in to work that night. The Claimant admitted, though, that he did layoff on call on January 12, 2015.

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's disciplinary record is less than stellar. In less than five years, the Claimant has thirteen marks of discipline, and this was his fifth violation in twelve months. The Claimant had been disciplined thirteen times for missed calls and attendance. Given that disciplinary background, coupled with the violation in this case, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or

Form 1
Page 3

Award No. 28587
Docket No. 48439
17-1-NRAB-00001-150235

capriciously when it terminated the Claimant's employment. 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.