

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13984
Docket No. 13870
08-2-NRAB-00002-080020**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Canadian Pacific Railway (Soo Line Railroad Company)**

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 35 in particular, the Canadian Pacific/Soo Line Railway, as a result of an investigation held on December 20, 2006, in St. Paul, Minnesota, unjustly and arbitrarily suspended Communication Technician William R. Stephens, II from service for a period of five calendar days.**
- 2. That, accordingly, the Canadian Pacific/Soo Line Railway be ordered to promptly make Communication Technician William R. Stephens whole for all lost wages, rights, benefits and privileges which were adversely affected as a result of the investigation and unjust assessment of discipline, and further that all record of this matter be expunged from his personal record in accordance with the terms of Rule 35, Paragraph S of the controlling Agreement.”**

FINDINGS:

The Second 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.

On December 20, 2006, Carrier conducted an investigation at its St. Paul, MN office complex into charges lodged against Claimant Stephens as a result of a series of actions alleged to have occurred on November 17, 18 and 19, 2006. At the conclusion of that hearing it then notified Claimant that he was being assessed a five-day suspension commencing on February 12, 2007. The Organization took exception to that action on February 16, 2007. Following denial in case handling on the property the case was advanced to the Board for final resolution.

Evidence adduced at Claimant's hearing indicates that he was charged with four rule violations:

"Failure to comply with SPC 24 on November 17, 2006 and November 19, 2006.

Failure to provide OTS protection on November 17, 2006 and November 19, 2006 in violation of Rules 31.1.2 and 21.1.

Failure to respond promptly when called on November 18, 2006.

Poor maintenance practice on November 17, 2006 and November 18, 2006."

Pursuant to Carrier's correspondence of December 19, 2007, following hearing Claimant was found guilty of the first and fourth charges. With respect to the first, the record reveals that Carrier's Rule 2.5 requires an employee taking a hot box detector (HBD) out of service to notify the control center, the dispatcher and a supervisor. According to the testimony of Claimant's Supervisor, Bruce

Hansen, Claimant removed an HBD from service on November 17, 2006 without providing the required notification. In response to a request for an explanation for that failure, Claimant simply responded, "No, I overlooked it."

The allegation of failing to respond promptly was based upon an incident on November 18 when Claimant was contacted at his home in Madison, WI at 8:33 p.m. by Keith Price and advised of a HBD failure at M.P. 25 in Sparta, WI, some 115 miles away. He left his home, drove to headquarters in Portage, WI, arriving between 11:30 p.m. and midnight and picked up the necessary equipment for the repair. He then drove thirty minutes to Sparta, ate and checked into a motel at Tomah, WI where he went to bed around 2:00 a.m. without notifying his supervisor that he had knocked off for the night. He left the motel at 10:30 a.m. the next morning, arriving at the work site around 11:00 a.m. on November 19, fourteen and one-half hours from the time he had been called.

The hearing transcript is long and mildly chaotic, but it leaves little doubt about two things: First, in failing to provide the mandatory notice of his removal of an HBD from service on November 17, 2006, Claimant unequivocally violated Rule 2.5. In the face of Claimant's admission of negligence and absent any mitigating circumstances, this rule violation warranted discipline.

Second, while the Organization correctly argues that there is no rule against claiming fatigue, Claimant's own testimony in this instance draws the voltage down on that argument. In partial explanation for his conduct he professed to be too tired to make the necessary repairs in a safe manner. Had he been too tired to safely undertake his assignment, however, he had a clear obligation to make that fact known to his supervisor.

Additionally, the testimony he offers in attempting to justify his actions in eating and retiring before going to the work site, and possibly completing his task on straight time by midnight, is essentially a windy and somewhat discursive discussion of his thought process. By all objective measures it generally breaks down to a combination of tiredness and a somewhat implausible concern for his ability to properly align the scanner at night. He thus delayed his report from 11:30 p.m. to 11:00 a.m. the following morning (with overtime kicking in after midnight) and left

the unit out of service all night because, "I forgot to call the supervisor," he states. "But I thought I was taking care of the problem."

Based upon substantial record evidence of Claimant's dereliction, Carrier does not share Claimant's enthusiasm for that rationale, and neither does this Board. Notwithstanding Claimant's rationalizations, the facts appear to pose a clear-cut case of old-fashioned goofing around. Under the circumstances, the Board concludes the discipline imposed was both moderate and warranted.

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 Second Division

Dated at Chicago, Illinois, this 25th day of November 2008.