

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30679  
Docket No. SG-31316  
95-3-93-3-438

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(CSX Transportation, Inc. (former Seaboard  
( Coast Line Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the  
Brotherhood of Railroad Signalmen on the CSX  
Transportation Company (former Seaboard Coast Line):

Claim on behalf of R. L. Lynch for  
compensation for time lost as a result of  
disciplinary suspension of August 3 to August  
7, 1992, and removal of discipline from his  
personal record, account Carrier violated the  
current Signalman's Agreement, particularly  
Rule 47, when it failed to provide the  
Claimant with a fair and impartial  
investigation and failed to provide Claimant's  
representative with notice of the decision in  
this matter."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole  
record and all of 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 waived right of appearance at hearing  
thereon.

On July 8, 1992, Claimant was notified of an Investigation, to be held July 17, 1992, concerning defects found June 8 - June 11, 1992, by the Federal Railroad Administration, where such defects had been previously found and shown to have been corrected. The Investigation was held as scheduled, and on July 27, 1992, Claimant was advised that he had been issued a five day actual suspension, to be served August 3 - 7, 1992.

The Organization contends that Carrier failed to comply with Rule 47 of the controlling Agreement which reads, in part, "A decision and copy of the transcript of investigation will be furnished to the employee and his representative within twenty (20) days after completion of the investigation." Because the Vice General Chairman who represented Claimant at the Investigation did not receive a copy of the decision, the Organization argues, the claim must be sustained.

The Organization further argues that the record shows that Claimant did correct one of the two defects at issue. With respect to the second defect, the Organization argues, Claimant made repairs that were approved by his supervisor. Furthermore, in the Organization's view, even if Claimant had some responsibility for the situation, Carrier failed to consider the mitigating effects of the supervisor's involvement. Consequently, according to the Organization, the penalty imposed was arbitrary and excessive.

Carrier contends that the decision letter was personally provided to Claimant. Carrier argues that the failure to send a copy to the Vice General Chairman does not invalidate the discipline imposed. Carrier argues that the language of Rule 47 is directory, rather than mandatory, and that Rule 47 does not require that the discipline be invalidated for a technical violation.

Carrier argues that the record established Claimant's responsibility for failing to correct the two defects at issue. Furthermore, in Carrier's view, the discipline imposed was not arbitrary or excessive, in light of the seriousness of the offense. Carrier observes that greater discipline has been upheld for similar offenses.

The Board considered the Organization's procedural objection to the discipline. A copy of the decision was not sent to the Vice General Chairman and, consequently, Carrier violated Rule 47. The clear weight of authority, however, is that such a violation does not invalidate the discipline in the absence of prejudice to the Claimant and Organization's ability to perfect an appeal. See, e.g., Third Division Awards 29584, 22703, 20423, 11775; Second Division Awards 12249, 9204.

The following discussion in Second Division Award 9204 applies with equal force to the instant case:

"Rule 34 was negotiated by the parties to provide due process to disciplined employees, and the Board generally holds that its procedural requirements must be met. However, such a posture does not mean that a procedural infraction by a Carrier automatically results in the setting aside of an otherwise just disciplinary action. The important question here is whether the Claimant's position in this case and his right to due process were adversely affected by the Carrier's failure to send a copy of the discipline decision to the General Chairman within the prescribed 10 days. We think not. . . . [T]he General Chairman was apparently apprised of the discipline decision within the contractual 60-day appeal period, for he mentioned in a letter of June 18, 1979 that he had not received a copy."

Turning to the merits, we find that substantial evidence supports the finding made on the property of Claimant's responsibility for the two defects found uncorrected by the FRA. The defects involved two junction boxes which were previously found to not be properly secured against unauthorized entry. Claimant reported both as having been corrected. With respect to the first box, the evidence showed that Claimant replaced the box, but failed to properly ground it because he failed to remove the old terminals and attach the wires to the new terminals. In other words, the defect had not been fully corrected.

With respect to the second junction box, the evidence established that Claimant had not corrected the defect. Instead, he merely used two wires to hold the lid onto the junction box onto the pole. The box still had a hole on the side and, consequently, remained unsecured against unauthorized entry. Claimant was responsible for correcting the defect and he failed to do so.

The Board has considered the seriousness of the offense, the Claimant's prior record, and the mitigating effects of Claimant's supervisor's apparent approval of the use of the wire to secure the junction box temporarily. We find that the penalty of a five-day actual suspension is not arbitrary, capricious or excessive.

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Claim denied.

O R D E R

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 Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.