

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30993
Docket No. SG-31646
95-3-93-3-680

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(CSX Transportation Company, Inc. (former
(Baltimore & Ohio - Chicago Terminal
(Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of R.C. Wolf for reinstatement to service with seniority unimpaired and with payment for all lost time and benefits and entry of discipline removed from his record, account Carrier violated the current Signalmen's Agreement, particularly Rule 40, when it failed to provide the Claimant with a fair and impartial investigation and imposed the harsh and excessive discipline of dismissal, effective December 14, 1992, without meeting its burden of proving its charges against the Claimant." Carrier's File No. 15-(92-68). BRS File Case No. 9175-BOCT.

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

As a result of an Investigation, Claimant was advised by a notice dated December 23, 1992 that he was dismissed for falsification of an expense account wherein he charged \$38.00 and \$42.00 for taxi rides in Huntington, West Virginia, on November 29 and December 4, 1992, respectively.

The Carrier secured a statement from the Manager of the Cab Company at Huntington, West Virginia, stating the fare from the airport to the training school was \$16-18. The Manager's written statement also stated that the trip sheets for the drivers on the two dates in questioned carried entries of \$18.00 and \$18.40, respectively.

Claimant's defense was that when he arrived at the Huntington Airport, it was late at night. A number of Claimant's fellow passengers were students returning to a college somewhere in the neighborhood and there was a shortage of cabs. In fact, according to Claimant, there was only one and that driver named the fee he wanted. Claimant said there was a meter in the cab, but it was not turned on.

The receipt for the \$38.00 trip to the motel where Claimant was staying was, according to Claimant (and never rebutted) written out by the cab driver.

On the return trip from the motel to the airport, Claimant again stated he had difficulty getting a cab as supposedly, the motel was too far out, but he finally found one who would make the trip for a \$40.00 fee. Once again, Claimant stated the driver completed the receipt. No rebuttal was offered.

It may very well be that the actual fare from the airport to the motel was on the average \$16-18 and it may very well be that the trip sheets did list \$18.00 and \$18.40, respectively and it may very well be that the cab numbers listed on the receipts were bogus, but Carrier did not rebut Claimant's version. It stands to reason that if the metered fare was around \$18.00 and the charge was doubled, identification of the receiver of the doubled fares would not be too anxious to make himself or herself known, particularly if a West Virginia Public Service Commission investigation was launched.

Claimant further stated he discussed the taxi problem with the Carrier official at the training session and that person unsuccessfully tried to get a cab to take Claimant to the airport. That official, however, was not at the Investigation.

The charges in this instance are serious and if substantiated could brand the Claimant as a person who is less than trustworthy.

The Carrier has the burden to substantiate the charges. In this instance, it did not sustain that burden. It never talked to the Carrier official at the training class. It had no one else check out the rates from the motel to the airport or vice versa, late at night or at any other time to determine if indeed, some chicanery was taking place. In fact, the trip log for the return trip reads from the school to the airport, whereas Claimant stated he traveled from the motel to the airport.

Claimant is to be returned to service with all seniority rights intact and he is to be reimbursed for all wages lost as provided in the schedule Agreement.

AWARD

Claim sustained.

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 Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.