

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31635
Docket No. SG-31484
96-3-93-3-180

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (CSX Transportation, Inc. (former Louisville
(& Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of R.L. Stonecipher, for compensation for all time lost and removal of discipline from his personal record account Carrier violated the current Signalmen's Agreement, particularly Rule 55, when it failed to prove its charges against the Claimant during a hearing conducted on April 16, 1992, and then imposed the arbitrary, harsh and excessive discipline of a 60-day suspension. Carrier's File No. 15 (92-34). General Chairman's File No. 92-208-INV-07. BRS File Case No. 8953-L&N."

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.

By letter dated March 30, 1992, the Claimant was notified that he was to be the subject of an Investigation, which was held on April 16, 1992 for the following purpose:

"to develop the facts and determine your responsibility, if any, in connection with false information given by you through your testimony at Hearing held March 18, 19, and 20, 1992 in the General Office Building at Atlanta, Georgia and your failure to follow written instructions issued you by me [Signal Supervisor L. R. Griffis] on March 23, 1992.

You are charged with insubordination, dishonesty and/or concealing facts concerning matters under investigation.

* * *

You are hereby suspended pending hearing and decision."

Reference was made to the transcript of the March 18-20, 1992, Hearing, but no copy of this earlier transcript was provided for the Board's review. It can only be surmised that the Carrier referred to statements by the Claimant as to his home address. What else may have been involved is not clearly stated, although there is some indication of the Claimant's testimony concerning previous training which he may or may not have received.

As to the March 23 "written instructions," this was entered into the transcript as follows:

"All Signal Maintainers please advise this office in writing your current home address and where you are ordinarily to be called. Please give me this information upon receipt of this letter."

To this, the Claimant replied in writing on the same letter as follows:

"Item 1. Current Home Mailing address - R. L. Stonecipher, Sr. - 808 Hazelwood Drive, Woodstock, Georgia 30188.

Item 2. I can ordinarily be called at 404-516-0143."

The address and telephone number are identical to a written notice supplied by the Claimant on September 11, 1991.

Following the Hearing, the Claimant was notified in pertinent part as follows:

"The facts adduced at the investigation held April 16, 1992, proved conclusively that you misrepresented the facts at the investigation held on March 18, 19 and 20, 1992 in an attempt to conceal information requested of you and that your actions were deliberate and borders on dishonesty. The facts further reveal that you were evasive in disclosing to the Carrier your home address which you were instructed to furnish. Your evasiveness in complying with the reasonable instructions issued you by your Supervisor, borders on insubordination."

As a result, the Claimant was assessed a 60 day suspension, in addition to the time withheld from service pending the Investigation.

Based on a review of the entire transcript, the Board can find no support whatever for the conclusions reached by the Carrier in assessing the disciplinary penalty. In addition, in the conduct of the Hearing Officer the Board finds strong support for the contention that the Claimant did not receive a fair and unbiased Hearing. These conclusions are based on the following:

1. As to the March 23 letter of instructions, the Claimant replied as to his home address (808 Hazelwood Drive, Woodstock, Georgia) and a telephone number where he could be reached (which happened to be at a different location). The Carrier's own investigation showed that the Woodstock address was the Claimant's father's home, and obviously could legitimately be stated to be his home. There was no testimony that the Carrier at any time had been unable to reach the Claimant through the telephone number he submitted.

2. Having established this, the Hearing Officer nevertheless pursued repeatedly the point that the telephone number was actually at another location. The Claimant never stated otherwise. It was established that the Claimant was related to the residence attached to the telephone number. With some reluctance, the Claimant's representative presented the unchallenged information that this residence was that of the Claimant's estranged wife and child.

3. If there was some alleged "false" testimony at the March 18-20 Hearing concerning prior training, Organization testimony and evidence, also unchallenged, left no basis for the allegation of falsity.

4. The Carrier's dismissal letter does not support the charge of insubordination, dishonesty and/or concealing facts "concerning matters under investigation." To what matters under investigation, does this refer? No specific reference is provided. Further, the Claimant is deemed to have taken action which "borders on dishonesty" and "borders on insubordination." The charges accused the Claimant of insubordination and dishonesty. This is clearly not the same as the Carrier's conclusion that his action "borders on" these offenses. If an employee "borders on" reporting late for duty, does not that mean the employee was not tardy?

5. The Hearing Officer's conduct did not meet the standards for a fair Hearing. In his leading questions, he "made the case" for the Carrier. His questioning was frequently accusatory and argumentative, rather than confined to permitting the witness to testify in a non-hostile atmosphere. The tenor of the Hearing was established at the outset when the Hearing Officer said to the Claimant:

"Wait, Mr. Stonecipher before this goes any further, I read in this Investigation already that this Investigation will be conducted in a manner with courtesy and civilness. I will now ask you to answer the questions directed to you and not be argumentative to the Conducting Officer and conduct your[self] with courtesy and civilness. Now would you please answer the question that was directed towards you."

This came after the Claimant had been interrupted twice by the Hearing Officer as the Claimant sought to answer a question about his "current residence."

In disciplinary matters, the Carrier has the responsibility to show that the Hearing supported the charges made against the employee. When all was said and done, it appears that the simple and plausible explanation was that the Claimant had consistently given an address in Woodstock as his legal residence and place to receive mail, and he also supplied a telephone number at a place where his estranged family lived and where he visited or was able to have telephone messages conveyed to him. As indicated in the Carrier's own disciplinary letter and by the testimony and evidence set forth in the Hearing, this burden of proof was simply was not met. The Board can reach no other conclusion from the Hearing record.

In sustaining the claim for "all time lost and removal of discipline," the Board specifically includes the time withheld from service pending Hearing as well as the suspension itself, but excludes pay for overtime which the Claimant may or may not have been assigned to work.

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 Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.