

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32036
Docket No. SG-32548
97-3-95-3-458**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Terminal Railroad Association of St. Louis (TRRA):

Claim on behalf of E.K. Hubbard to be reinstated to service with his record cleared of all charges in connection with the investigation conducted on May 18, 1995, and to be made whole for all time and benefits lost as a result of his dismissal from service, account Carrier violated the current Signalmen's Agreement, particularly Article VIII, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him in this matter. General Chairman's File No. 95-49-A-D. BRS File Case No. 9685-TRRA."

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 were given due notice of hearing thereon.

Claimant was employed as a Signaller with a seniority date of July 3, 1968. On May 1, 1995, Claimant was regularly assigned to a Construction-Maintenance Gang with hours of service 8:00 A.M. to 4:00 P.M.

On or about 1:00 P.M., immediately following lunch, Claimant asked his Foreman for permission to go home, which was granted.

On May 2, 1995, Carrier's Chief Engineer, Maintenance, Signals and Communications, issued Notice of Investigation to Claimant and three other members of the gang "to develop the facts, discover the cause and determine your responsibility, if any, for your alleged failure to protect your employment on May 1, 1995 when you were observed leaving your headquarters point to go home between 1:00 P.M. and 1:30 P.M., without authorization of proper authority."

Investigation was held May 18, 1995, and a copy of the transcript has been furnished this Board. Claimant, along with the three others, were found guilty of the charges and dismissed from service effective May 23, 1995.

The Organization appealed Claimant's dismissal in accordance with the requirements of the Collective Bargaining Agreement, but was unable to obtain satisfactory adjustment. The claim was filed with this Board September 15, 1995, and is properly before this Board for adjudication.

As a matter of information, the other three involved employees subsequently pleaded guilty to the charges, requested leniency and were reinstated in June and July, 1995.

The Board has studied the transcript of the May 18, 1995, Investigation along with the record of handling on the property, and is convinced that Carrier failed to prove its charges of leaving the headquarters without proper authority.

Testimony found in the transcript clearly reveals that Claimant asked his Foreman for permission to go home and that the Foreman granted permission and had him transported from the job site to the headquarters point so he could sign out and leave the property.

The record reveals that Claimant has a health problem of which the Carrier is aware, and that from time to time it is necessary that he be relieved from work.

Carrier has pointed to Claimant's prior disciplinary record as support of its assessed discipline in this case, but what Carrier conveniently overlooked was the fact that no consideration of prior discipline can be given in the absence of proving the instant charges.

The claim will be sustained to the extent set forth in Article VIII, Section 8 reading:

"Sec. 8. If the charge against the employee is not sustained, it shall be stricken from the record. If, by reason of such unsustained charges, the employee has been removed from the position held, reinstatement will be made and payment allowed for the assigned working hours actually lost at not less than the rate of pay for the position formerly held, or for the difference in rate of pay earned in or out of service of the railroad."

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 6th day of May 1997.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION NO. 1 TO AWARD NO. 32036

DOCKET NO. SG-32548

NAME OF ORGANIZATION: (Brotherhood of Railroad Signalmen)

NAME OF CARRIER: (Terminal Railroad Association of St. Louis)

This Award returns to the Board at the request of the Organization for an interpretation. Award 32036 sustained the claim of E. K. Hubbard for reinstatement to service with his record cleared of all charges and made whole for all time and benefits lost as a result of his dismissal from service.

The Carrier reinstated the Claimant to the Signalmen's Seniority Roster and paid him for time lost during the period of May 23, through August 31, 1995. It did not compensate him for any time subsequent to August 31, 1995, because he filed an application with the Railroad Retirement Board for disability annuity on October 31, 1995. The Railroad Retirement Board certified the Claimant disabled for employment and after a mandatory waiting period of five months (September, October, November, December, 1995, and January 1996) commenced payment of his disability annuity effective February 1, 1996.

The Organization argues that under the terms of the Award, the Carrier must make the Claimant whole for the period of September 1995 through January 1996. The Carrier declined on the grounds that the Claimant was disabled and not available for employment during the said five months.

Award 32036 does not require the Carrier to compensate the Claimant for the period of September 1995 through January 1996, for the reason that his loss of compensation for the period was not caused by his dismissal, but rather by his disability prohibiting him from performing service as a Signalman for the Carrier. Once he was certified disabled for service, the Carrier was relieved of further liability.

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**Interpretation No. 1 to
Award No. 32036
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Referee James E. Yost who sat with the Division as a neutral member when Award 32036 was adopted, also participated with the Division in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 16th day of November 1999.