

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32198
Docket No. SG-32816
97-3-96-3-132

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Incorporated

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad (GTW):

Claim on behalf of M.F. Embry to have the discipline of 20 demerits imposed against him on April 3, 1995 rescinded, account Carrier violated the current Signalmen's Agreement, particularly Rule 42, when it did not provide the Claimant with a fair and impartial investigation and imposed discipline against the Claimant without meeting the burden of proving its charges against him, in connection with an investigation held on February 14, 1995. Carrier's File No. 8390-1-87. General Chairman's File No. 95-23-GTW. BRS File Case No. 9765-GTW.”

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.

The Claimant, a Signal Maintainer, in service with the Carrier since August 18, 1986, was charged with insubordination and given 20 demerits after an Investigation held on February 14, 1995. The Claimant allegedly failed to comply with an instruction issued by the Signal Supervisor on December 30, 1994 to report to the Andersonville Forley Road crossing to assist two fellow Signal Maintainers in the removal of a tree in the pole line.

The other two Signal Maintainers went directly from the office to the job site, arriving there at about 8:30 A.M. They received permission to get on the rails from the Dispatcher at about 9:00 A.M. The Claimant, however, was assigned to first complete some office work for the Signal Engineer, who was to drop Claimant off at a clinic for a lab test. After that test, Claimant was instructed to report to the Andersonville Forley Road crossing to assist the two other Signal Maintainers.

The Signal Engineer testified that Claimant was released from the clinic at 9:30 A.M. Claimant arrived at the Andersonville Forley Road crossing sometime between 10:00 and 10:15 A.M. By that time the other two Signal Maintainers had finished removing the downed tree and had the line back in operation. The Signal Supervisor determined that the clinic was only about 20 minutes away from the location of the downed tree, and the fact that Claimant took more than 20 minutes to report to the job site constituted insubordination.

The evidence shows that Claimant received and understood the instruction to report to the job site after being released from the clinic. The core questions are whether his reporting was timely and, if not, did untimely reporting constitute insubordination. The time Claimant reported to the job site is not clearly established, however, he was anywhere from ten to 25 minutes late. Under the circumstances that tardiness does not constitute insubordination. This job site was not part of Claimant's territory, and he contended he got lost trying to find the job site. This Board finds that contention plausible. Claimant has no prior history of discipline.

In view of the foregoing, we find the discipline imposed was improper.

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 17th day of September 1997.