

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32464
Docket No. SG-33532
98-3-96-3-1115

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad (BN):

Claim on behalf of R. D. Parry for reinstatement to service with payment for all time and benefits lost as a result of his dismissal from service beginning October 17, 1995, and for removal of the entry of discipline from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it failed to provide the Claimant with a fair and impartial investigation and disciplined him without meeting the burden of proving its charges in connection with an investigation conducted on October 6, 1995. Carrier’s File No. SIA-96-02-06AA. General Chairman’s File No. B-2-96(D). BRS File Case No. 10171-BN.”

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.

Following an October 6, 1995 Investigation the Claimant was advised that he had been found guilty of violating numerous Rules and was dismissed from service. Claimant had been charged and found guilty of "altering receipts and thus falsifying documents to collect moving expenses in connection with your move to Beach, North Dakota. . . ."

It is the position of the Organization that the Carrier pre-judged the Claimant and failed to prove the charges against him. Central to this argument the Organization notes that the Claimant acted honestly, supplied requested information and brought forth notarized statements to prove that all moving expenses were real.

With respect to the Carrier's alleged charge of altering receipts to collect moving expenses, there can be no doubt that receipts were altered. The Carrier provided both the original \$12.95 receipt and the altered receipt where the Claimant added \$100.00 for a trailer hitch. The Carrier also supplied the original and altered receipt where the date was changed on the purchase of boxes. The Claimant testified that he had altered all receipts for legitimate reasons.

The Board notes that the Carrier's position in this case is that the discipline was assessed due to the seriousness of the offense and Claimant's past discipline. A consideration of the Claimant's past discipline is appropriate only after the charges are proven. The Carrier's basis for the discipline is that the Claimant "altered receipts to collect expenses that he was not entitled to receive." The Claimant testified, and the notarized documents attest to the fact that the added \$100.00 for the trailer hitch and the charge for the boxes was actually purchased for the move. There is nothing in this record of sufficient probative evidence to prove that the Claimant engaged in behavior to defraud the Carrier. There is nothing in this record to prove that the Claimant attempted to collect monetary reimbursement for which he was not entitled.

The weight of the evidence was the responsibility of the Carrier. This Board finds a clear lack of evidence to establish an attempt on the part of the Claimant to collect monies neither incurred, nor reasonably believed to be legitimate moving expenses. The

Claimant introduced notarized documents that the trailer hitch was installed on his car and the boxes purchased for the move to Beach, North Dakota. The evidence at the Investigation demonstrates that the Claimant paid for the materials, used them for the move and reported them as moving expenses. The Board does not deny that the Claimant used exceedingly poor judgement in his manner of adding and altering receipts to show actual expenses, but poor judgement is not fraud. The burden of proof that the Claimant intended to defraud the Carrier by his behavior has not been met. As in all disputes where the charges brought against a Claimant are not substantiated by the weight of the evidence, the Board has no alternative but to sustain the claim.

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 21st day of January 1998.