

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32563
Docket No. SG-33732
98-3-97-3-180

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

PARTIES TO DISPUTE: (*Brotherhood of Railroad Signalmen*
(*Union Pacific Railroad Company*

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

Claim on behalf of L.A. Dillard for payment of all time lost as a result of his suspension from service and for all reference to this discipline to be 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 harsh and excessive discipline against him in connection with an investigation conducted on September 7, 1995. Carrier's File No. 960147. General Chairman's File No. 58406931. BRS File Case No. 10235-UP."

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.

This discipline case involves the application of an **UPGRADE DISCIPLINE POLICY** which was promulgated on this property effective July 1, 1994. Under the policy, proven infractions are classified at a predetermined level with corresponding assessments of discipline for each level. Accumulations or repetitions of infractions at a particular level cause the next proven infraction to be raised to the next higher level for assessment purposes. Level 4 of the policy mandates a suspension of 30 days off work without pay.

In this case, Claimant was charged with failure to report for his assigned position on August 28, 1995. A Hearing in connection with this charge was held on September 7, 1995, at which time Claimant was present, represented and testified on his own behalf. At the conclusion of the Hearing, Claimant was informed on September 14, 1995, that, on the basis of the Hearing record, he was found guilty of the charge, and on the basis of the **UPGRADE POLICY**, he was assessed a Level 4 suspension of 30 days off work without pay. The suspension began on September 15, 1995, and ended on October 14, 1995. The discipline as assessed was appealed on Claimant's behalf, and failing to reach a satisfactory resolution on the property, the dispute has come to this Board for final and binding resolution.

The position of the Organization centers on the argument that the 30-day suspension was harsh and excessive in light of the circumstances present in the case. It contends that this instance of missed work was Claimant's first such offense in his 14-year employment history. It argues that such a one-time offense does not warrant such a severe penalty especially in light of the mitigating circumstances which existed here, to wit, that Claimant was not well physically and his oversleeping was inadvertent. It further contends that the **UPGRADE POLICY** was misapplied in this case and cite with favor First Division Award 24022 and Second Division Award 12618 in support of its contention.

The Carrier insists that the Hearing transcript - including Claimant's own admissions therein - conclusively establish the guilt of the charged offense. Carrier also points to the fact that Claimant had previously been assessed a Level 2 disciplinary citation on April 14, 1995, as well as a second Level 2 citation on May 17, 1995. Carrier insists, therefore, that inasmuch as Claimant was already at Level 3 when this particular infraction occurred, this was Claimant's third disciplinary infraction and the **UPGRADE POLICY** required the assessment of a Level 4 penalty.

From the Board's review of the Hearing transcript, there is found more than substantial evidence, including Claimant's admissions against interest, to support the conclusion of guilt on the specific charge of failure to report for assigned work. There is no convincing evidence of mitigating circumstances in this regard.

The Board's review of the UPGRADE POLICY finds no fault with Carrier's assessment of discipline at Level 4. The Organization's arguments relative to "same type" violations are not convincing. The Awards cited as precedential do not address situations such as found here. Second Division Award 12618 cautions against applying a discipline policy "by rote" and First Division Award 24022 cautions against consideration of far removed incidents "with no defined time limit before the slate is wiped clean." However, under this UPGRADE POLICY, the slate is wiped clean "after 36 months without another violation" and the consideration of two previous Level 2 infractions within a five-month period of time is clearly not a mechanical application of policy without intelligent attention as implied by the term "rote." Such a consideration is the purpose of the UPGRADE POLICY. Such an assessment of discipline is not excessive in these circumstances. This particular policy has been reviewed by other Section 3 Boards of Adjustment and has been found worthy. In this case, we find no basis to find fault with the policy. The claim as presented is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of April 1998.