

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32954
Docket No. SG-33746
98-3-97-3-196

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

Claim on behalf of J.J. Rocha for payment for all time lost as a result of his suspension from service in connection with an investigation conducted on October 4, 1995, account Carrier violated the current Signalmen's Agreement, particularly Rule 41, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him in this matter. Carrier's File No. 95-14-39. General Chairman's File No. 95-67-41. BRS File Case No. 10213-ATSF.”

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.

At all material times herein Claimant, with approximately 15 years of service with no prior discipline, was assigned to cover territory 3507 - Stockton East, originally assigned to another employee who was unable to perform this duty because of medical restrictions. On September 16 and 17, 1995 Claimant was scheduled to perform standby duty on this assignment, but instead arranged with that same employee so that he would perform Claimant's standby duty on the days in question. When Claimant's Supervisor discovered the arrangements between Claimant and the other employee, he instructed the Claimant that those arrangements were unacceptable in light of the other employee's medical restrictions. Accordingly, Claimant was instructed to either cover the assignment himself or find another employee to do so for him. Despite those instructions, the employee on medical restrictions attempted to cover for the Claimant anyway on September 16, 1995. After Investigation the Claimant was assessed a Level 3 suspension of 30 days.

The Organization argues that the discipline imposed in this case is not supported by just cause because the record establishes that the Claimant did not willfully disobey the Supervisor's orders, but that he and the other employee in question were simply confused. In the alternative, the Organization contends that a 30 day suspension is excessive either because the offense was not sufficiently serious to be a Level 3 offense and even if it was, only a ten day suspension was warranted. The Carrier on the other hand asserts that the Claimant did in fact act willfully and that the discipline imposed was appropriate.

We disagree with the Organization that the record does not establish the Claimant's guilt in this matter. First, Claimant knew that he was in the position in question *because of* the medical restrictions on the other employee. Second, the record shows that despite the Supervisor's instructions that either he or some other employee would have to cover the assignment, the Claimant continued with his prior arrangement. Thus, there is no other conclusion but that the Claimant acted knowingly and we do not accept the contention that he acted only out of confusion.

The only question then is whether the offense was a Level 3 offense and if a 30 day suspensions was warranted under the circumstances. In the Carrier's Correction Action/Guidelines distinctions between Levels 1 through 4 are made only on the basis that a "minor offense" has been repeated. Clearly the record in this case establishes that this is the Claimant's first offense. Thus, a Level 3 categorization on the basis of repetitive conduct is not in order. Moreover, in its Guidelines the Carrier does

distinguish between "minor" and "serious" offenses. However, the Carrier itself regarded the misconduct as "minor." Despite that conclusion, and despite its own Guidelines the Carrier assessed the level of discipline appropriate for repeated offenses, an assessment without basis under its own Guidelines. Thus, since the misconduct was "minor" and not a second or subsequent incident of "minor" misconduct the proper discipline should have been, as set forth in the Guidelines, a "cautionary letter." We so find.

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 23rd day of November 1998.