

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33844
Docket No. SG-34464
99-3-98-3-98**

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern Pacific
(Transportation Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP):

Claim on behalf of D.H. Wattenberger for reinstatement to service with his record cleared and with compensation for all time and benefits lost as a result of his dismissal following an investigation held on December 5, 1996, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him without meeting the burden of proving the charges. Carrier's File No. SIG D97-1. General Chairman's File No. SWGC-1422. BRS File Case No. 10550-SP.”

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.

D. H. Wattenburger ("Claimant") was employed by Carrier as an Assistant Signalman and was working as such on November 6, 1996, when the boom on his truck hit a high voltage power line. Claimant was tested for drugs at Suisun, California, immediately following this accident. Apparently MedExpress Laboratory, the first testing laboratory, mistakenly indicated Kimberly Quality Care, Yuma, Arizona, as the collection site in its computerized report, whereas the correct collection facility was actually Ameritest in Suisun, California. However, this alone is not a fatal flaw in the testing protocol because review of the testimony shows that Claimant signed off on the collection form stating that his urine specimen was collected, sealed, and labeled correctly and that all the chain of custody forms had the proper accession number, specimen identification bar code number and Claimant's social security number.

On November 20, 1996, Carrier's Certified Medical Review Officer notified Claimant by telephone that MedExpress Laboratory had reported a positive test for amphetamines on his urine sample collected on November 6, 1996. During that interview, Mr. Wattenberger indicated that he was taking no prescription medication at that time, but that some time previously he had taken a prescription steroid asthma inhaler, Beconase, until he ran out of it and stopped taking it. At that time he also indicated that he had been taking two over-the-counter medications, Actifed and Tylenol-PM and reiterated his statement at the November 6, 1996 collection site that he had taken a pill from a friend which he thought was "No-Doz." Carrier presented unrefuted evidence that these substances do not produce a "false positive" for amphetamines.

After the first test was confirmed positive and discussed with Mr. Wattenburger, a split specimen was shipped at his request to a different certified laboratory and again tested. The split specimen, shipped from Med Express Laboratory to Med Tox Laboratory for the reconfirmation test, was also tested positive for amphetamines. Moreover, because split specimens are tested to the limit of detection, not only was amphetamine identified in Claimant's specimen but specifically "D-isomer" methamphetamine was identified. This latter finding obviates Claimant's belated assertion, following his termination, that his alleged usage of a "Vick's Inhaler" might have produced a false positive for the "L-isomer."

Claimant was charged with "Rule G" violation and discharged following an investigation at which the foregoing evidence was adduced. As a first-time offender, under the Carrier's policy Claimant would have been entitled after a period of time to enter the Carrier's Rule G rehabilitation program and be reinstated under a conditional reinstatement agreement. However, Carrier declined to allow Claimant to do so in this case because of his adamant denial of any responsibility for the proven Rule G violation. Carrier met its burden of proof in this case but, as did the Board in SBA 1046 in Award 30, an almost identical case between these same Parties, we conclude that the penalty of discharge must be reduced to a long term suspension. Carrier is directed to offer Claimant participation in the rehabilitation with conditional last chance reinstatement to service, without backpay, under the same conditions of as set forth in Award 30 of SBA 1046.

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 21st day of December 1999.

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33845
Docket No. SG-34749
99-3-98-3-415**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of M. L. Foster for payment of 90.6 hours at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope and Classification Rules when it used outside forces to repair 18 control modules used in the signal system and deprived the Claimant of the opportunity to perform that work. Carrier’s File Nos. SG-964, SG-965, SG-966. General Chairman’s File Nos. RM2978-42-0597, RM2979-42-0597, RM2980-42-0597. BRS File Case No. 10535-CR.”

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 is a Signal Department employee of the Carrier, with seniority in both the Electronic Specialist and Electronic Technician classes, who was assigned to the Carrier's Avon Yard at the time this dispute arose.

The Organization contends that the Carrier violated the Scope Rules of the parties Agreement in January, 1997, when it used an outside company to repair a number of control modules (printed circuit boards). The control modules were part of internal components of interlockings, not then covered by any warranty. The work was performed at the manufacturer's designated repair facility in Greensboro, North Carolina.

The Organization cites the Agreement between the Brotherhood of Railroad Signalmen and the Consolidated Rail Corporation (Conrail) which provides, in part;

“SCOPE

These rules shall constitute an agreement between the Consolidated Rail Corporation and its employees, represented by the Brotherhood of railroad Signalmen, covering rates of pay, hours of service and working conditions of employees in the classifications hereinafter listed who are engaged, in the signal shop or in the field, in the construction installation, repair, inspection, testing, maintenance or removal of the following signal equipment and control systems, including component part, appurtenances and power supplies (including motor generator sets) used in connection with systems covered by this Agreement and all other work recognized as signal work:

* * *

Printed circuit boards

* * *

EXCEPTIONS

(a) Work performed by outside companies incident to warranty, provided qualified employee covered by this agreement accompanies the outside contractor”

The Organization notes that the circuit boards which were repaired were not covered by any warranty.

The Carrier denied that the Scope Rule covers the repairs made to the printed circuit boards and asserts that such repair work has always been performed off the property. The record is silent with regard to this equipment ever being returned to the Carrier. The Carrier also disputes the number of hours claimed, noting it seemed to be a computation based on the Carrier's repair cost to the outside vendor rather than the actual number of hours which would have been spent doing the repair.

The Scope Rule only covers repair of printed circuit boards "in the signal shop or in the field." By its very terms it does not cover repairs, like these, made off the property. Thus the Carrier was not precluded by the Agreement from sending the work out.

The Board must look to the historical practice of the parties. The Carrier asserts that the repair of printed circuit boards has historically been done by private companies off property, and the Organization has failed to present any evidence to counter that claim.

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 21st day of December 1999.