

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34221
Docket No. SG-35108
00-3-98-3-855

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Baltimore and Ohio
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of M.T. Warner 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 9, 1997, account Carrier violated the current Signalman’s Agreement, particularly Rules 50 and 52, 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. 15(98-36). BRS File Case No. 10866-B&O.”

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 claim filed on February 4, 1998 challenges the Claimant's dismissal for failure to follow instructions in regard to the proper use of a company issued Corporate Lodging Card (CLC) and engaging in conduct unbecoming an employee on various dates in November and on December 2, 1997 at the Country Hearth Inn in Auburn, Indiana.

An Investigation was conducted on December 9, 1997 at which time three Carrier Officials testified as to reports they received and an Investigation conducted concerning the Claimant's failure to tender his CLC lodging card to motel staff on two occasions when he stayed over the period November 9-20, 1997 despite numerous requests, an altercation he had with a motel employee wherein he used profanity, his unauthorized use of the kitchen after it was closed as well as staying in the room of another employee without following proper check-in procedures. Much of this information came from written statements given by motel staff who did not attend the Investigation. At the Investigation, the Claimant admitted that he did not follow the Carrier instructions and policy in regards to his use of the CLC lodging card, he had an altercation with motel staff during which he used profanity, and that he was not in compliance with the Carrier Rule 501 (1) and (2) concerning conduct unbecoming an employee.

The Organization argues that the Carrier did not afford the Claimant a fair Hearing in that much of its evidence was hearsay, and the Claimant was not afforded the opportunity to question the witnesses from the motel. The Carrier notes that the evidence adduced was proper that there are few disputes of fact that it supported the charge of conduct unbecoming an employee by substantial evidence, and that the dismissal was appropriate for such an offense impacting upon its reputation with the public concerning an employee of only six-month duration.

The Board reviewed the entire record and concludes that the Carrier sustained its burden of proving that the Claimant violated Rule 501 (1) and (2) by engaging in an altercation with motel staff and using profanity, as well as failing to follow proper procedures concerning the use of his CLC lodging card, despite his knowledge of such procedures. We make this finding without the need to rely upon any hearsay evidence, because the Claimant admitted to misusing his CLC lodging card, his involvement in the altercation and profanity, and the fact that he knew the Rules and did not follow them. Under all of the circumstances, we are unable to find any basis to overturn the Carrier's imposition of the penalty of dismissal in this case.

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 23rd day of August, 2000.