

****CORRECTED****

**Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35367
Docket No. SG35314
01-3-99-3-163**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 Union Pacific Railroad Company (former Southern Pacific):

Claim on behalf of S.S. Howard for compensation for all time and benefits lost in connection with the discipline assessed against him following two investigations held on February 20, 1998, and to have all reference to these matters removed from his record, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it did not afford Brother Howard fair and impartial investigation, and imposed discipline against him without meeting the burden of proving the charges. Carrier's File No. 1121076. General Chairman's File No. SWGC-1750. BRS File Case No. 10783-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.

From August 4 to October 29, 1997, the Claimant was assigned to Signal Gang 5801 on the Carrier's Colorado Division Signal Gang. The gang was working on former Denver and Rio Grande Western property. The Claimant did not report for work on the System Signal gang between August 4 and October 29, 1997, nor did he contact any supervisor on the gang to explain his absence. He was not on an approved leave during his three month absence from the gang.

On October 29, 1997, the Carrier mailed a notice to the Claimant's last known address instructing him to report to his assignment within 15 days. The Claimant did not report to his assignment as instructed and did not contact his supervisors to explain his absence.

On December 18, 1997, the Claimant was mailed a second notice to report for his assignment within 15 days. Again, he did not comply with these instructions and did not contact his supervisors on the gang to explain his absence.

On January 29, 1998, the Claimant was sent two notices to attend two Investigations on February 20, 1998. The first Investigation was being held to determine his responsibility, if any, for failing to follow the instructions given him on October 29, 1997, to return to his assignment within 15 days. The second Investigation was scheduled to determine the Claimant's alleged insubordination by failing to comply with the instructions given him on December 18, 1997.

On March 2, 1998, the Carrier advised the Claimant that the first charge was sustained and that he was being assessed a Level Two discipline (one day of alternative assignment with pay to develop a Corrective Action Plan) under the Union Pacific UPGRADE discipline policy. On March 2, the Claimant was further advised that the second charge was also sustained and that he was being assessed Level Five discipline (dismissal) as a result. The Organization appealed both disciplinary actions to the Board.

Rule 53(a) of the Signalmen's Agreement provides that employees will not be disciplined or dismissed without a fair and impartial Investigation. Neither Investigation that the Carrier held was fair and impartial, in the Board's opinion. The Conducting Officer summarily closed the first Investigation over the strenuous objection of the Claimant's representative who wanted to submit a document into the record. The Conducting Officer refused to allow the document into the record.

The second Investigation was even more egregious than the first one. The only evidence introduced at the second Investigation was the notice of Investigation itself and the October 29, 1997 letter that had been sent to the Claimant instructing him to report for his assignment within 15 days. How the Carrier came to the conclusion that the Claimant refused to comply with the December 18, 1997 instructions based on this flimsy evidence is difficult for the Board to understand.

There is no doubt in the Board's mind that the Claimant was disciplined and dismissed on March 20, 1998, without the benefit of a fair and impartial Investigation. Therefore, that discipline must be expunged from his record and he must be reinstated to service if he obtains the approval of the Carrier's Employee Assistance Counselor. The Claimant is not entitled to any backpay because he evidently was unable to perform his Signalmen's duties subsequent to August 4, 1997.

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 20th day of March, 2001.