

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36066
Docket No. SG-36181
02-3-00-3-379

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Santa Fe Railway (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co. (former Burlington Northern Railroad):

Claim on behalf of D. K. Ryan for reinstatement to service with compensation for all lost time and benefits and seniority unimpaired and to have any reference to this matter stricken from his personal record. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it dismissed the Claimant from service without meeting the burden of proving the charges against him, and without the benefit of a fair and impartial investigation, and issued harsh and excessive discipline against him in connection with an investigation held on October 7, 1998. Carrier File No. 34-99-0011. General Chairman’s File No. D-11-99(d). BRS File Case No. 11339-BN.”

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 was scheduled to report for work September 24, 1998. He did not report to work at his assigned starting time. On that same date, he was notified to attend an Investigation to determine responsibility, if any, for his failure to report. Subsequent to the Investigation held on October 7, 1998, the Claimant was found guilty and dismissed from service.

The Organization has argued that the Investigation was not fair and impartial; that the circumstances resulting in the Claimant's failure to appear for work were beyond his control; and finally, that the discipline was harsh and excessive. The Carrier has denied all of the Organization's arguments.

The Board's review finds the Carrier complied with the Agreement in providing a fair and impartial Investigation. It also finds no doubt that the Carrier has met its burden of proof. The Claimant's Foreman testified that the Claimant did not report for duty at 7:00 A.M., and in fact, called at 8:40 A.M. stating "that he overslept." The Claimant was informed to call the Signal Supervisor, who testified that the Claimant told him that he had been out hunting and became "stuck." The Claimant testified at the Investigation that he had not reported for duty on September 24, 1998, "because I was stuck out in the prairie of Wyoming, with no means of communication available until I was returned back to my home at 8:40 in the morning." There is clear proof of a Rule violation with guilt established.

The only question left for our consideration is the discipline assessed. The Organization argues that it is harsh and excessive. The Board has reviewed the Carrier's action, considering the Claimant's past disciplinary record. We find that the Claimant has a record which persuades the Board that this discipline should not be disturbed. The Claimant waived Investigation and accepted a reprimand on September 2, 1997 and again waived Investigation and accepted a 30-day suspension for failure to follow instructions. On February 20, 1998, the Claimant was assessed a 20-day suspension for failure to properly report for duty. On April 8, 1998, the Claimant signed an action plan agreeing to "absolutely no tardiness or unexcused absences from work," unless prearranged with his Supervisor. On June 25, 1998, following another

Investigation, the Claimant was again found to have failed to properly report for duty and was assessed a 20-day suspension. Given the Claimant's past discipline and the Action Plan which he failed to follow, the Board cannot find the Carrier's actions as either harsh or excessive. The Claimant violated the Agreement and the discipline assessed by the Carrier will not be disturbed.

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 May, 2002.