

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36228  
Docket No. SG-36172  
02-3-00-3-367

The Third Division consisted of the regular members and in addition Referee James E. Mason 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 M.L. Kennedy for payment of all lost time and benefits and for any reference to this matter to be removed from the Claimant's personal record. Account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when Carrier suspended 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 April 16, 1998. Carrier File No. SIA 98-09-28AA. General Chairman's File No. C-9-98(d). BRS File Case No. 11338-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 in this case was regularly assigned as a Signal Inspector at Galesburg, Illinois. On the date in question, March 31, 1998, the Claimant was acting as a Trainer and was conducting a Book of Rules examination. As a result of remarks allegedly made during the Book of Rules examination, the Claimant was notified on April 6, 1998, to attend an Investigation on a charge of conduct unbecoming an employee by allegedly making discourteous and inappropriate comments during the Book of Rules examination on March 31.

The Claimant attended and participated in the Hearing. He was represented throughout the proceeding. He testified on his own behalf and was accorded all of the due process rights to which he was entitled under the terms of the negotiated Rules Agreement.

Following completion of the Hearing, the Claimant was notified on May 13, 1998, that he had been found guilty of the charges as made and was removed from the position of Trainer. He was also assessed a disciplinary suspension of 20 days which was served from May 11 to May 30, 1998.

The Claimant's 20-day suspension was appealed at all appropriate levels during the on-property handling of this dispute. Failing to reach a satisfactory resolution of the dispute on the property, the 20-day suspension issue has come to the Board for final resolution.

The Board has carefully reviewed the extensive transcript which was developed at the Hearing. In this, as well as any other discipline case which comes to the Board for review, the parameters of review are clearly set forth by a multitude of decisions which have emanated from the Board. The Board will not substitute its judgment for the party assessing the discipline in situations in which the moving party has supported their charges by "substantial" evidence. The definitions of "substantial evidence" has been clearly set forth for the Board. It is:

"... more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."  
(Consol. Ed. Co. vs. Labor Board, 305 U.S., 197, 229)

From a review of the testimony presented in this case, there is a glaring absence of "relevant" evidence to support the conclusion that the Claimant in this case was, in fact, guilty of the charges made. Practically all of the witnesses who testified at the Hearing indicated that they neither saw nor heard any actions or statements by the Claimant which were discriminatory, discourteous or inappropriate. In fact, the Assistant Signalman whose allegations precipitated the action as initiated against the Claimant, clearly testified that he did not consider any action or statement of the Claimant as "... discrimination or a form of harassment or anything like that." In short, the Carrier has failed in this case to support their charges with relevant evidence which a reasonable mind might accept as adequate to support their conclusions.

Therefore, the claim as presented is sustained.

**AWARD**

Claim sustained.

**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 24th day of September 2002.