

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37067
Docket No. SG-37850
04-3-03-3-222

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
(Springfield Terminal Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Springfield Terminal (ST):

Claim on behalf of J. W. Worcester, for three days pay in accordance with Article 19.6, account Carrier violated the current Signalmen's Agreement, particularly Article 19, when it inappropriately and without just cause issued a three-day suspension to the Claimant as a result of an investigation held on May 13, 2002. Carrier's File No. S-02-01. General Chairman's File No. WHK-75-004-0802. BRS File Case No. 12463-ST."

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 assigned to the position of Signal Maintainer at Waterville, Maine. He was properly notified to be present at Billerica, Maine, at 10:00 A.M. on April 23, 2002, for the purpose of taking a qualification examination relative to a position for which he had bid. The Claimant failed to report for the examination at the time instructed and made no attempt to notify the Carrier that he could not report as instructed. The Claimant eventually reported at Billerica at 12:30 P.M. The examination was held starting at approximately 1:00 P.M.

Subsequently, by notice dated April 30, the Claimant was notified to report for a Hearing to be held on May 9, 2002, in connection with his failure to report as instructed on April 23. Following an agreed-upon postponement, the Hearing was held on May 23, 2002. The Claimant was present, represented, and willingly participated in the Hearing. Following completion of the Hearing, the Claimant was notified by letter dated June 7, 2002, that he had been found at fault and was assessed a three day suspension. The suspension was appealed by the Organization on the Claimant's behalf through the normal on-property grievance procedures and is now before the Board for final determination.

The record shows that the Claimant admitted that he knew it was wrong to be tardy for the examination. The record further shows that the Claimant apologized for his tardiness. In addition, the record shows that his tardiness was not due to any deliberate action on his part. Nevertheless, his unauthorized tardiness caused the Carrier to sustain unnecessary overtime expenses with respect to not only the Claimant, but also to the test proctor and another examinee.

From the Board's review of the record, it is our conclusion that the assessment of a three-day suspension was not warranted. The record shows that the Claimant has consistently taken responsibility for his misconduct rather than unnecessarily challenge or protest charges. The Board therefore directs that the claim as presented be sustained with the exception that his payment be reduced by the five hours of overtime paid to the Claimant on April 23, 2002, and also reduced by the two hours of overtime paid to the test proctor and the other examinee (4 hours total) on April 23, 2002.

AWARD

Claim sustained in accordance with the Findings.

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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 22nd day of June 2004.