

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37307  
Docket No. SG-37573  
04-3-02-3-671

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of G. L. Cathell, Jr. for compensation for all lost wages and benefits, his seniority unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 50, 51, 52 and 53, when it assessed the harsh and excessive discipline of a five day suspension against the Claimant as a result of an investigation on November 9, 2001, without meeting the burden of proving the charges. Carrier’s File No. 15(01-0217). General Chairman’s File No. GLC-Insv. BRS File Case No. 12193-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 is a companion case to Third Division Award 37305. On Monday, October 1, 2001, the Claimant was working his regular assignment as a Lead Signalman. As a supervisor, he was responsible for his personal safety as well as the safety of Signalman C. E. Urie, Jr. Part of their work assignment for the day included the use of chainsaws to cut and remove trees and brush that was interfering with the signal pole line. Both employees engaged in a safety briefing that included a discussion about the rough terrain involved, the tools needed for cutting brush and the necessary safety equipment. Although the Claimant had previously used protective leg chaps while operating a chainsaw, neither he nor Signalman Urie used protective gear on October 1.

At approximately 3:30 P.M., Signalman Urie sustained a laceration to his left knee when he lost control of his chainsaw while clearing brush. Signalman Urie immediately received medical attention, including eight stitches to close the wound. He was off of work for three weeks as a result of his on-duty injury.

By letter dated October 29, 2001, the Claimant was directed to attend an Investigation to be held on November 6, 2001, ". . . to determine the facts in connection with your operating a chainsaw without protective leg chaps on October 1, 2001. You are charged with violation of CSX Operating Rule 501 and Safety Rules 1C, 1E and E/M 16F."

The Investigation was held on November 9, 2001. In a letter dated November 26, 2001, the Carrier notified the Claimant that as a result of the Investigation, it was determined that he was guilty as charged and would be assessed a five-day suspension.

By letter dated December 20, 2001, the Organization appealed the Carrier's decision to suspend the Claimant, contending that the Carrier failed to meet its burden of proof and that the discipline assessed was unwarranted and excessive. The Organization contended that the discipline assessed was disproportionate with

discipline assessed to other employees for the same type of infraction. The Organization asked that the Carrier reconsider its decision.

The Organization claims that the discipline was unwarranted. It asserts that the burden of proof in a discipline matter such as this is on the Carrier and that burden has not been met. The Organization contends that the Carrier imposed harsh and excessive discipline against the Claimant. According to the Organization, the Carrier's decision to discipline the Claimant constitutes an abuse of its discretion and the Carrier should now be required to compensate the Claimant for all lost time and benefits, with all reference to the discipline and Investigation to be removed from his personal record.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Investigation in accordance with the requirements of the Agreement. The Carrier considers the Claimant guilty as charged. According to the Carrier, the Claimant's own admissions during the Investigation demonstrate sufficient evidence to support the Claimant's culpability. The Carrier contends that it met its burden of proof and that the discipline was appropriate based on the nature of the offense.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence *de novo*. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accordance with what we might or might not have done had it been ours to determine, but to pass upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325, Third Division Award 16166.)

After a review of the evidence, the Board finds that there was substantial evidence in the record to uphold the Carrier's position in whole. The Board notes that the Carrier proved, and the Claimant admitted, that he was not wearing leg chaps while operating a chainsaw on October 1, 2001. Based on the record, the Board concludes that the five-day suspension is an appropriate penalty.

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Therefore, the claim is without merit and the Board will not disturb the discipline imposed.

**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 December 2004.