

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37329  
Docket No. SG-37713  
05-3-03-3-54**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc. (former Chesapeake and  
( Ohio Railway 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 J. W. Goff, for all time lost, including overtime, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 701, when it imposed the harsh and excessive discipline of a 10-day suspension against the Claimant without meeting its burden of proving the charges in connection with an investigation held on March 6, 2002. Carrier’s File No. 15-02-0062. General Chairman’s File No. 02-14-PM. BRS File Case No. 12454-C&O (PM).”**

**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, who was assigned to the position of Signalmen on Gang 7P46, was involved in a parking lot accident that caused damage when he backed his truck with an attached trailer into the driver's side of another CSXT vehicle.

By letter dated February 6, the Carrier directed the Claimant to attend an Investigation to be held on February 12, 2002, "... to develop the facts and place responsibility, if any, for damage to CSX Vehicle #A7484D while attempting to make a reverse movement with company boom truck on or about 09:00 hours at Holland, Michigan on February 4, 2002. You are charged with the failure of CSXT General Safety Rule 1.B, 1E, CSXT Safeway Rule E/M 14.B and damage to CSXT company vehicle #A7484."

Following the Investigation that was held on March 6 and by letter dated April 8, 2002, the Carrier found the Claimant guilty as charged and issued a ten-day actual suspension.

Under date of April 16, 2002, the Organization appealed the Carrier's decision to suspend the Claimant. 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. It further 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 it 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 Signalmen's Agreement. It considers the Claimant guilty as charged. According to the Carrier, the evidence adduced during the Investigation demonstrates sufficient grounds to support the Claimant's culpability and 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 accord 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 its discretion. See Second Division Award 7325 and Third Division Award 16166.

The Board finds substantial evidence in the record to uphold the Carrier's position. The Carrier proved that the Claimant caused the accident on February 4, 2002. Based on the record, the Board concludes that the ten-day suspension is an appropriate penalty. Therefore, the claim is without merit.

**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 19th day of January 2005.