

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37791
Docket No. SG38253
06-3-04-3-172

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Baltimore & Ohio):

Claim on **behalf** of N. **J. Rampulla** Jr., for removal of a 30-day suspension from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50, when it failed to provide a fair and impartial investigation evident when it issued the harsh and excessive discipline of a 30 day suspension on the Claimant as a result of an investigation held on June **12, 2003**. Carrier’s File No. **15(03-00053)**. General Chairman’s File No. Insv-NJR. BRS **File** Case No. 12948-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.

On May 20, 2003, the Claimant was involved in an accident while operating the Company owned vehicle that was assigned to him for his use in the performance of his Signal Maintainer's duties. At the scene of the accident, the Claimant was cited by the local police for improper driving. He subsequently paid a **fine** for his infraction.

By letter dated May 23, 2003, the Claimant was instructed to attend a formal Investigation on June 3, 2003, on the charge of failure to operate a CSX vehicle in a safe and proper manner. The Investigation was postponed at the request of the Organization and was rescheduled for June 12, 2003. The Claimant was present at the Investigation; he was represented and testified on his own behalf. At the beginning of the Investigation the Claimant acknowledged that he had been properly notified of the charges and that he was ready to proceed with the Investigation.

During the Investigation the **Claimant** readily admitted that he was, in fact, responsible for the accident. He contended, however, that the weather conditions and the placement of the rear view mirrors on the vehicle were contributory causes of the accident.

Following completion of the Investigation, the Claimant was informed by letter dated July 3, 2003, that he was found guilty of the charges and was assessed discipline of 30-days suspension which he served from July 8 to August **6, 2003**. The Organization initiated an appeal on the Claimant's behalf which was handled in the usual manner on the property. Failing to reach a satisfactory resolution of the dispute during the on-property handling, the case is now before the Board for **final** determination.

It is the Organization's position that the discipline imposed was harsh and excessive given the mitigating circumstances that were involved in this case. The rainy weather condition, the Claimant's unfamiliarity with the vehicle, as well as the poor visibility from inside the vehicle were, in the Organization's opinion, factors that contributed to the accident.

The Carrier argued that the Hearing record speaks for itself. The Claimant's admissions against interest are compelling. The discipline imposed was appropriate

“... especially in light of the fact that the Claimant was involved in two other **traffic** accidents with company vehicles within the preceding two years.”

From the Board's review of the entire case record, it is apparent that the Claimant was accorded all due process rights to which he was entitled. The Hearing record contains substantial evidence to support the conclusion that the Claimant was not sufficiently alert to the conditions under which he was operating. He knew it was raining. He knew that the rear view mirrors were, according to him, less than satisfactory. Yet he proceeded to attempt to move into a lane of traffic where he did not have the right-of-way. He admitted that he was cited and **fined** for this operating infraction. The record supports a finding of guilty.

However, having said that, the Board is disturbed by the Carrier's reference to the Claimant's prior discipline record which was apparently considered in determining the amount of discipline assessed. The Carrier cited a prior incident that occurred on July 9, 2001, and another prior incident that occurred on August 19, 2002. Each of these incidents involved the Claimant and a CSX vehicle accident and, under normal circumstances, could be used in determining the degree of discipline to assess in a subsequent proven violation. The problem with that conclusion in this case is found in a Carrier letter dated **July 17, 2001**, in connection with the July **9, 2001** incident. In that letter the Carrier stated:

“This letter is not a form of discipline and will not be used in any subsequent disciplinary proceedings as evidence that you previously violated a rule.”

Clearly then, prior to the instant episode, the Claimant's prior history of traffic accidents consisted of only the August 19, 2002, incident for which the Claimant was assessed a minimal discipline of a “Time Out.”

Normally the Board will not substitute its judgment for that of the Carrier in assessing discipline unless it is apparent that the discipline as assessed is excessive or unreasonable. The Board has repeatedly recognized that discipline should be progressive and corrective in nature rather than punitive punishment.

In this case the Carrier ignored its own determination relative to the 2001 prior incident and used that incident as evidence in support of the instant case. That amounts to “dirty pool” and is indicative of punitive action in this case. The

single prior incident of discipline was a “Time **Out**” which amounted to minimal discipline for that event. It is difficult to support a 30-day suspension for this second incident as being a reasonable escalation in a progressive discipline procedure. The case here could have been made with a 15-day suspension. This degree of penalty would have been in keeping with a progressive discipline procedure.

The 30-day suspension is hereby reduced to a 15-day suspension. The Claimant shall be reimbursed for time lost beyond the 15-day suspension.

AWARD

Claim sustained in accordance with the Findings.

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 31st day of May 2006.