

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37899
Docket No. SG-36857
06-3-01-3-425**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of J. K. Chandler for payment of all lost time and benefits and for any reference of this matter to be removed from his personal record. Account Carrier violated the current Signalmen's Agreement, particularly Rule 68, when it suspended the Claimant from service without benefit of a fair and impartial investigation and without meeting the burden of proving the charges against him in connection with an investigation held on September 19, 2000. Carrier's File No. 1243240. General Chairman's File No. Ndisp-117. BRS File Case No. 11702-UP.”

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.

Following an Investigation held on September 19, 2000, the Claimant was assessed Level 3 discipline by letter dated October 6, 2000, for using loud and profane language in violation of Rule 1.6.

The Organization's challenge to that action initially sets forth several procedural objections to the Carrier's handling of the Investigation. First, it contends that Charging Officer Boswell was wrongly permitted to introduce into evidence a prior waiver form signed by the Claimant in connection with an earlier similar incident. That action, it is asserted, was both prejudicial to the Claimant's case and represented a prejudgment of his guilt prior to the Hearing. Second, the Carrier demonstrated by the remarks of Boswell during the Hearing that he had already made up his mind with respect to whether a Rule violation had occurred. Rule 68 requires a full and fair hearing. Preconceived judgments are inconsistent with the letter and spirit of that Rule.

With respect to the merits, the Carrier failed to bear its burden of proving a Rule violation. A careful reading of the transcript reveals that the Claimant was simply blowing off steam and that his rough remarks were not directed at Manager Signal Operations Kies. Accordingly, the matter should have been handled outside the framework of the Carrier's discipline policy.

The Carrier argues that there were no procedural defects in its handling of the matter, at least none so egregious as to warrant disturbing the discipline. Substantial testimony was adduced at the Claimant's Hearing, including his own admissions, to easily establish a violation of the Rules prohibiting the use profane language towards supervisors. The claim must therefore be denied.

Upon review of the full record the Board concludes that the Claimant was not materially prejudiced either by reference to his past waiver or any remarks of the Charging Officer. We find that the Carrier discharged its obligation to provide the full and fair Hearing guaranteed by the Agreement.

Turning to the merits, Rule 1.6 - CONDUCT at Section 7 dictates simply that, ". . . employees must not be discourteous." The Hearing transcript herein establishes that when MSO Kies attempted to ask the Claimant if he had ever contacted a Signal Maintainer that had been expected to work on a certain problem, he refused to respond directly, instead becoming loud and profane:

"So then after that, I went in to talk to John to see if John had ever actually talked to the maintainer. And in the course of that conversation, I was never really answered. John immediately started going off about that it wasn't his job to take care of the directors and that wasn't his - you know, he ran the territory and it wasn't his job to do this and I tried to explain to him that they were our customers and we were responsible to handle any requests from our customers, and like I said I couldn't - I really couldn't get a word in edgewise, I mean, John just kept going on. Every time he would stop talking, I would try to bring something else up and he would go off again . . . he would start cussing and swearing and saying basically what's in this letter. I mean, should I use the words that he was saying or. . . ."

Kies' version of events was confirmed by the testimony of the Claimant's fellow employee S. Wiseman who was sitting at a desk next to the Claimant while he was speaking with Kies. According to Wiseman:

"I can't remember the exact words that were said, but . . . Mr. Kies walked in to the room to get some information from Mr. Chandler. And Mr. Chandler promptly blew up about the request, and it degenerated to him generally yelling at Mr. Kies, and . . . there were profanities. . . ."

The Board concludes that the Carrier's view of the issue is the correct one. A review of the record developed by the parties discloses that substantial evidence exists to support the allegation that the Claimant's actions were discourteous and confrontational. The disciplinary action taken in response - a Level 3 five-day suspension - in light of the Claimant's past history of a Level 2 Discipline, was entirely appropriate. The claim must be denied.

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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 22nd day of August 2006.