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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38225
Docket No. SG-38700
07-3-05-3-104

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 S. A. King, for removal of the 30-day suspension with payment for all lost time and benefits 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 failed to provide a fair and impartial hearing and then issued harsh and excessive discipline against the Claimant without meeting its burden of proving its charges in connection with an investigation held on December 2, 2003. Carrier’s File No. 15(04-0039). General Chairman’s File No. SAK-Insv. BRS File Case No. 13140-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.

At the time of his discipline Signalman S. A. King was assigned to Signal Team 7X14. On November 24, 2003, the Claimant was notified to appear for a formal Investigation:

“... to determine your responsibility, if any in connection with your failure to follow specific instructions issued to you by your supervisor pertaining to you being absent from work on 11-19-03. You are charged with violation of CSXT Operating Rule 500, that part that states without permission from their immediate supervisor employees must not:

1. Absent themselves from duty

You are also being charged with violation of CSXT Rule 501 that part which states:

Employees must not:

4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent;
5. Willfully neglect their duty.”

The Investigation was held on December 2, 2003. By letter dated December 19, 2003, the Carrier notified the Claimant that he had been found guilty of the charges alleged and was assessed a 15-day actual suspension without pay. In accordance with an Agreement dated October 13, 2003, in which the Claimant had agreed to accept a 15-day overhead suspension “for a period of one year if found guilty of any CSXT Rules or Policies” he was assessed an additional 15 days.

It is the Carrier's position that the discipline assessed was entirely fair, if not lenient. It points out that the Claimant had been instructed on at least three prior occasions – including counseling and discipline – regarding the necessity of complying with the Carrier's Rules regarding absence from duty without proper authority. In addition, the Carrier pointed out that the Claimant himself acknowledged in his testimony that his absenteeism was an on-going problem.

The Organization maintains that the Claimant attempted to call his supervisor, but only reached his answering machine. It noted that the supervisor admitted he checked his office answering machine once or twice a week. Thus, the Organization insists, the Claimant was being disciplined because the supervisor did not take the time to check his answering machine on a timely basis.

The Board reviewed the record including the transcript of the Investigation very carefully. It is undisputed from the testimony of the Claimant's supervisor that, at least at one time, the Claimant had his supervisor's cell phone number – a number the supervisor was most likely to respond to at any given time – because the Claimant had previously contacted him at that number. For reasons not clear in the record, the Claimant elected to leave a message on the supervisor's office answering machine, and not to call the supervisor's cell phone. In light of the Claimant's previous problems with attendance and the pending overhead 15-day suspension, such behavior suggests a reluctance to take seriously the Carrier's reasonable expectation that an employee will report for duty on a regular and predictable basis.

The Board finds no evidence in the record to support overturning or mitigating the discipline assessed by the Carrier.

AWARD

Claim denied.

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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 25th day of June 2007.