

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38227
Docket No. SG-38935
07-3-05-3-375

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
(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:

Claim on behalf of D. S. Carlton, for removal of any mention of this discipline from his personal record and his discipline level returned to zero, account Carrier violated the current Signalmen’s Agreement, particularly Rule 68, when it issued a Level 2 discipline to the Claimant without meeting its burden of proving the charges in connection with an investigation held on August 6, 2004 and then failed to issue the discipline within the time limit provisions of Rule 68. Carrier’s File No. 1405733. General Chairman’s File No. N 68 466. BRS File Case No. 13167-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.

At the time this claim arose, Signalman D. S. Carlton was assigned to Signal Gang 8398. On July 26, 2004, the Carrier notified him to attend an Investigation:

“ . . . to develop the facts and place responsibility, if any, that while working as a Signalman, you allegedly failed to comply with instructions given to you by the relief signal foreman on July 23, 2004 at approximately 11:25 a.m. Your actions indicate a possible violation of the current Union Pacific Rule 1.13, a possible Level 2 violation.”

Specifically, the Claimant was charged with leaving his work site without permission and not reporting back to work for the remainder of the day.

By letter of September 3, 2004, the Carrier notified the Claimant that he had been found guilty of the charges alleged and was assessed a Level 2 discipline. A Level 2 discipline requires that the employee attend one day of alternative assignment with pay to develop a Corrective Action Plan. The Organization appealed the discipline by letter of September 28, 2004. It maintained that the Carrier had made several procedural errors in connection with the conduct of the Hearing, and that the charges were unproven. The appeal was denied and subsequently handled up to and including conference on the property, after which it remained unresolved.

With respect to the procedural objections, the Organization contends that the Hearing was not fair and impartial, because it was located far from the site of the alleged incident, and because the Carrier presented witnesses for its own case, but failed to produce the single witness who could exonerate the Claimant. A review of the transcript does not persuade the Board that the Hearing was fatally procedurally flawed. There is no indication that the Claimant had any doubt regarding the charges against him; he was able to mount an informed defense at the Investigation. Nor is there probative indication that the Hearing's distance from the site of the alleged infraction was in any way a barrier to the Claimant's defense. In sum, we do not find that the Hearing was either unfair or fatally biased.

With respect to the merits of this case, testimonial evidence presented at the Hearing, including the Claimant's own admissions, indicate that he did not report to his supervisor or comply with instructions per Carrier Rule 1.13, because he neither sought nor received permission to return to the motel in which he was staying and not return to work. Moreover, the Claimant's testimony regarding his actual whereabouts on the day in question is contradictory and lacks credibility. It is clear from his own testimony, however, that he had not intended to complete his normal work day unless specifically asked to do so.

In light of the foregoing, the Board finds no basis upon which to overturn the Carrier's assessment of discipline.

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 25th day of June 2007.