

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39496
Docket No. SG-39111
09-3-NRAB-00003-050575
(05-3-575)

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Rail
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp. (METRA):

Claim on behalf of O. K. Coney, for payment for all time lost and that the Claimant be made whole with the discipline imposed rescinded and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53, when it imposed the harsh, excessive and disparate discipline of a 10-day suspension against the Claimant without providing a fair and impartial investigation or meeting its burden of proving the charges in connection with an investigation held on October 29, 2004. Carrier compounded these violations by showing a predisposition to impose discipline and failing to provide the exact charges against the Claimant prior to the investigation. Carrier’s File No. 11-13-473. General Chairman’s File No. 58 D 04. BRS File Case No. 13258-NIRC.”

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.

After notice dated September 28, Investigation eventually held October 29 and by letter dated November 5, the Claimant received a ten day suspension for failure to properly protect his Signalman's assignment at the Tinley Park Wire Shop on September 28, 2004.

Rule Q provides:

"Employees must report at the appointed time . . . [and] must not absent themselves . . . without proper authority."

Engineering Department Special Instructions No. 1 provides:

"If an employee is going to be absent, for whatever reason, the employee must notify the designated supervisor prior to the start of the employee's assignment. However, this notification does not automatically give an employee an authorized absence."

The Claimant's shift began at 7:00 A.M. on September 28, 2004. At the Investigation, the Claimant admitted that he was aware of the requirement to call in if he was not coming to work and he did not call in and advise the Carrier that he would not be at work on that date. According to the Claimant's testimony:

"Q . . . Mr. Coney, have you used the Wire Shop call off number previously?

A Yes.

Q And you are aware of that number?

A Yes.

Q Mr. Coney, on September 28, 2004, did you call off work with your immediate supervisor Mr. Heim?

A No.

* * *

Q And you are fully aware that that is a responsibility that you have, correct?

A Correct.

* * *

Q Could you give us some kind of an idea why you didn't give Mr. Heim a call that day when normally you do?

A My girlfriend, she was in very serious condition, and I just didn't want to leave her side at the time.

The situation was - it was kind of chaotic, and when it was over with, it was a little late in the morning, so I figured it wasn't no reason to call in now."

The Claimant further testified that he was not incapacitated so as to prevent him from calling in.

Substantial evidence supports the Carrier's decision that the Claimant engaged in misconduct in violation of Rule Q and Special Instructions No. 1 when he failed to protect his assignment on September 28, 2004 by not calling in to the Wire Shop to advise the Carrier that he would not be in to work that day. The Claimant

was not incapacitated or otherwise prevented from making a brief call to advise the Carrier of his status.

With respect to the amount of discipline, under the circumstances and considering the Claimant's record (which included prior suspensions) we cannot find that a ten day suspension was arbitrary.

We considered the Organization's other arguments and finds that they do not change the result.

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 2nd day of February 2009.