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**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39607  
Docket No. SG-39320  
09-3-NRAB-00003-060189  
(06-3-189)

**The Third Division consisted of the regular members and in addition Referee Joan Parker 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 General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp. (Metra):**

**Claim on behalf of O. K. Coney, for reinstatement to his former position with compensation for all lost pay and benefits restored and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53, when it issued the harsh and excessive discipline of dismissal against the Claimant on May 9, 2005, without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on March 16, 2005, concluding on April 29, 2005. Carrier’s File No. 11-13-489. General Chairman’s File No. 8 D 05 Coney. BRS FILE Case No. 13544-NIRC.”**

**FINDINGS:**

**The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

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**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 the instant discipline arose, Claimant O. K. Coney was regularly assigned as relief Signal Maintainer at Gresham Interlocking on the Rock Island District. By notice dated February 1, 2005, which was sent via Certified Mail, Return Receipt Requested, the Claimant was directed to attend a formal Investigation on February 8, 2005. The purpose of the Investigation was “. . . to develop the facts, determine the cause and assess responsibility, if any, when you allegedly failed to protect your position on Saturday and Sunday, January 29 and 30, 2005.” The Claimant was charged with violating Metra Employee Conduct Rule Q, Paragraph 1, which states:**

**“Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority.”**

**The Claimant's Hearing was postponed at the Organization's request, first to February 16 and subsequently to March 16, 2005. When the Hearing opened on March 16, the Claimant was not present. The Organization requested a continuance, and it was granted to March 23. Thereafter, the parties mutually agreed to resume the Hearing on April 22. In the interim, the parties agreed to continue the Hearing on April 29, rather than April 22. Pursuant to this arrangement, the Hearing resumed on April 29, but again, the Claimant was not present. Consequently, the Hearing was held in absentia.**

**In a letter dated May 9, 2005, the Carrier dismissed the Claimant effective that day. The Organization appealed the dismissal, and the matter was progressed**

in the customary manner. Following a conference held on November 29, 2005, the Carrier issued its final denial, and the Organization reaffirmed its position. Thereafter, the dispute was submitted to the Board for adjudication.

The Carrier contends that the Claimant was afforded a full and fair Hearing. He was properly notified of all scheduled Hearing dates and postponements and was afforded an opportunity to appear with representation. However, the Claimant never appeared on any of the Hearing dates that were arranged. On April 29, 2005, when the Claimant again failed to appear, the Hearing Officer granted a recess so that the Claimant's representative could try to reach him, but efforts to find the Claimant were unsuccessful. In the Carrier's view, it is clear that the Claimant failed to protect his assignment on January 29 and 30, 2005. He neither called in nor requested permission to be absent from work on either day. While his representative suggested that there might be "possible" medical issues, no documentation was entered into the record in support of this assertion. Given the Claimant's work record, which includes prior Rule Q violations, and even an earlier dismissal in 1998 for a Rule Q violation, the Carrier argues that there was just cause to dismiss the Claimant, who was at Step 4 of the discipline process when he was charged with the instant violations.

The Organization acknowledges that the Carrier had granted several postponements in this case, but it contends that there would have been no undue prejudice had the Hearing Officer granted another postponement. While there was an implication that the Claimant willfully boycotted the Hearing, the Carrier failed to prove that the Claimant sought to avoid the Investigation or prevent it from taking place. By moving forward with the Investigation in absentia, the Hearing Officer denied the Claimant the opportunity to present his case. Moreover, in the Organization's view, the Claimant was treated unfairly because he was disciplined for Rule Q violations on January 22, 23, 25, and 27, in addition to January 29 and 30, 2005. In effect, the Carrier pyramided three separate violations when, at most, there was only one continuous violation. By treating the Claimant's absences in late January as three separate occurrences, the Carrier expedited the Claimant's movement through the Progressive Discipline steps so that he could be more quickly dismissed without the benefit of progressive discipline. The Organization submits that there was reasonable basis to believe that the Claimant had some medical

problems, and therefore, the Carrier acted improperly in terminating the Claimant's employment without providing additional time for him to explain why he missed work on the days in question.

The Board carefully considered the record. While Rule 53 contemplates that employees accused of wrongdoing will attend scheduled disciplinary Investigations in order to answer charges, when an employee repeatedly fails to attend a formal Hearing without offering any reason for his absence, the Carrier has the right to go forward in absentia. Employees may not willfully refuse to attend formal Investigations and then use their failure to attend to unduly delay or frustrate the disciplinary process. In the instant case, the Claimant's Hearing was held in absentia after multiple postponements. The February 1 Hearing notice was sent to the Claimant's last known address via Certified Mail, Return Receipt Requested, and was signed for on February 3 at that address. Thus, he was properly notified of the Hearing that was scheduled for February 8, 2005. At the Organization's request, the Hearing was postponed first to February 16 and then to March 16, 2005. The Claimant was notified in writing of both postponements. On March 10 the Claimant was sent a certified letter notifying him of the March 16 Hearing, but he failed to appear. The Claimants' representative requested a continuance of the March 16 Hearing based upon a conversation he had with the Claimant's wife. He stated ". . . it appears he (Claimant) may be in the hospital, and I had requested documentation to support that, and she was going to get with me so that I could discuss that and, perhaps, get further documentation to support that." The continuance was granted until March 23, but in the interim, the Hearing was rescheduled first to April 22 and subsequently to April 29. On April 22, the Claimant was sent a letter via certified mail rescheduling the continued Hearing for April 29. Again, he did not appear at the Hearing. Even then, the Hearing Officer showed remarkable forbearance by granting a one-hour recess on April 29 so that the Organization's representative could attempt to contact the Claimant. That effort proved unsuccessful.

In these circumstances, the Hearing Officer did not act unreasonably in deciding to proceed with the Hearing in absentia. The Claimant was afforded numerous opportunities to appear at the Investigation and/or to communicate with his representative so that an appropriate adjournment could have been requested.

Instead, he spurned the Hearing process by contacting neither the Carrier nor his representative.

The Claimant's conduct in regard to his Hearing was consistent with his behavior in regard to his job. The Claimant's supervisor, E. Hettman, testified that the Claimant neither called in nor requested permission to be absent from work on January 29 and 30, 2005. Nor did any other individual call in and ask for permission on his behalf. Hence, there is no doubt that the Claimant failed to protect his position, as charged.

The Claimant's representative suggested that there might have been "possible" medical issues that prevented the Claimant from appearing at his Hearing to present his defense to the charges. However, the existence of such "possible" medical issues was never substantiated. Moreover, if such medical issues existed, or for that matter any other mitigating factors, it was the Claimant's responsibility to arrange for another Hearing date beforehand, either through his duly authorized representative, or by contacting the Carrier directly. However, he never took such action, and it was not the Carrier's obligation to guess at the reasons for the Claimant's repeated absences both from work and from his Hearing.

The Claimant's work record reflects that not only was he disciplined in the past for Rule Q violations, he was dismissed in 1998 for violating Rule Q. He received a letter of reprimand for absences on May 18, 19, and 20, 2004; a three workday deferred suspension in September 2004; a five workday actual suspension (in addition to activating the prior three days deferred on record) for absences on January 22 and 23, 2005; and a ten workday suspension for absences on January 25 to 27, 2005.

The Organization argues that the January absences were really only one absence, but that is not the case. The Claimant missed discrete work days in separate workweeks and was appropriately charged with Rule Q violations for those absences.

It is undisputed that the Claimant was absent without permission on January 29 and 30, 2005. Given his prior work record, the discipline assessed was not

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excessive. The Claimant had a history of violating Rule Q, and despite the application of progressive discipline, he failed to adhere to the Carrier's Rules in regard to protecting his assignments.

**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 1st day of April 2009.**