

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39668
Docket No. SG-40013
09-3-NRAB-00003-070217
(07-3-217)**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific (formerly Soo Line):

Claim on behalf of S. H. Feigenbaum, for reinstatement to his former position with compensation for all time lost with benefits and seniority unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 32, when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with investigation held on March 7, 2006. Carrier compounded this violation by failing to hold the hearing within the time limit provisions of Rule 32. Carrier’s File No. 9-00134. General Chairman’s File No. 05-20-06Feigenbaum. BRS File Case No. 13801-SOO.”

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.

The operative facts leading to the instant claim are not in dispute. Although the details of his "mistake" are not detailed in the record, it appears that the Claimant lost his driving license on or about January 30, 2006 as a result of an off-duty alcohol related driving violation. The Carrier permitted the Claimant to stay in an active payroll status through the use of accrued vacation and other credits. However, upon exhaustion of those credits, the Claimant was unable to protect his assignment, which requires a valid driver's license, after the President's Day holiday in February 2006. He was not allowed to work his Signal Maintainer position beginning February 22-23, 2006 without a valid license.

At the time of the incident leading to the Claimant's dismissal, he had some ten years of service. His work record contains several instances of prior discipline, two of which were alcohol-related. He had already been through the Carrier's Employee Assistance Program for one of his prior offenses. Nonetheless, the Carrier's witness noted that the Claimant was a good Signal Maintainer when he was on the job.

Although the Organization raised a procedural objection based on Rule 32 of the Agreement (which establishes a 30-day time limit for conducting a Hearing following an occurrence) our review of the record does not support the contention. The occurrence which triggered the running of the time limit was the Claimant's failure to protect his assignment on February 22, 2006 and not his loss of license in January. Accordingly, the Hearing held on March 7, 2006 did not exceed the time limit.

At the Hearing, the Organization requested that the Claimant be placed on a leave of absence until he regained his driving privileges. From the record, it appears that the soonest he could have obtained a restricted permit for work purposes was at least three weeks distant with no assurance that such a permit would have been available to him. The record also notes that the Organization asserted that other employees were allowed to work as Assistant Signalmen on a crew in similar situations. When challenged by the Carrier, the Organization was able to name only one employee who ostensibly was so treated. No details about the handling of that named employee were provided in the record.

It is well-settled that a single instance without supporting details is insufficient to establish the existence of a right by binding past practice. Instead, such an isolated instance is more reflective of an exercise of the Carrier's discretion which it is not required to repeat.

Upon review of the record before the Board, we are compelled to find that it contains substantial evidence in support of the Carrier's determination that the Claimant failed to protect his assignment as charged. Given the nature of the underlying reasons and his prior disciplinary record, we do not find the Carrier's decision to dismiss him from further employment was an abuse of the Carrier's judgment. Accordingly, the claim must be denied.

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 April 2009.