

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40258
Docket No. SG-39204
10-3-NRAB-00003-050676
(05-3-676)**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of D. Booker, for reinstatement to his former position with payment for all time lost, his seniority and benefits restored, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 57, when it failed to provide the Claimant with a fair and impartial investigation and then issued the harsh and excessive discipline of dismissal against the Claimant without meeting its burden of proof in connection with an investigation held on October 12, 2004. Carrier compounded this violation by failing to provide a complete and accurate transcript of the investigation. Carrier's File No. NEC-BRS(S)-SD-1054D. General Chairman's File No. JY3210101011-18051. BRS File Case No. 13308-NRPC(S).”

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 the relevant events, the Claimant was employed as a Signal Maintainer on the Northeast Corridor, headquartered at Penn Coach Yard in Philadelphia, Pennsylvania. On September 13, 2004, the Carrier directed the Claimant to attend a formal Investigation in connection with his activities on August 22, 2004, including allegations of trust and honesty violations, failure to attend to his assigned duties and failure to return the Carrier's vehicle. He was also charged with giving false answers to the Carrier concerning his activities. Following the Investigation, the Carrier found the Claimant guilty of the charges and dismissed him.

The facts of this case are not in dispute. On August 22, 2004, the Claimant was assigned to the "trouble truck" on second shift, ending at 11:00 P.M. When the third shift trouble truck employees arrived at work, they found the vehicle missing. One employee so notified Carrier supervisors. The supervisors were unable to contact the Claimant, and reported to police that the vehicle had been stolen.

Thereafter, Carrier officers checked the Carrier's Global Position System (GPS) and found that on August 22, 2004, from 3:00 to 11:00 P.M., the vehicle traveled to locations that did not appear to be Carrier property. The GPS records indicated that with the exception of the one trouble call, the vehicle was not on or near the Carrier's property during the Claimant's entire shift. In particular, the records indicated that the vehicle was parked in the vicinity of the Claimant's residence for extended periods of time, remaining there after the conclusion of his shift.

Carrier officers questioned the Claimant and his co-worker, who reported that they had responded to a trouble call at approximately 9:30 P.M. The Claimant also informed the Carrier officers that there was no work to perform so his absence had caused no harm, notwithstanding written instructions issued by the Carrier regarding duties employees are to perform when not responding to trouble calls.

The Claimant did not testify at the Investigation. He did not dispute any of the information offered by the Carrier's witnesses.

We carefully reviewed the record in its entirety. First, while the Organization raised numerous procedural objections to the discipline assessed against the Claimant, we find no evidence of any procedural irregularity which denied him his right to a full and fair Investigation. On the merits, the Organization does not dispute that the relevant events transpired as described by the Carrier's witnesses. Because the testimony of those witnesses clearly supports the Carrier's allegations against the Claimant, the Carrier met its burden of proving his guilt by substantial evidence.

With respect to the penalty assessed, the Organization asserts that the Claimant's dismissal represents a harsh and excessive penalty, and urges that inasmuch as the Claimant had no prior discipline, the Carrier should have afforded him an opportunity to correct the behavior that led to his mistakes. We cannot agree. As the Carrier asserts, the Claimant abandoned his assignment for substantial periods of time during his shift and claimed pay from the Carrier for that time. He engaged in unauthorized use of the Carrier vehicle and was dishonest concerning his activities. His conduct broke the bond of trust essential to the employer-employee relationship, and justifies dismissal regardless of his length of service and prior record. Therefore, we cannot find that the Carrier's dismissal was unwarranted, unfair, arbitrary, or an excessive exercise of the Carrier's discretion to determine penalties. Consequently, the claim must be denied.

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 15th day of January 2010.