

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40451
Docket No. SG-40123
10-3-NRAB-00003-070335
(07-3-335)**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Railroad
(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.:

Claim on behalf of J. S. Anderson, for payment for all wages lost with any reference to this matter removed from his personal record and to otherwise be made whole, as required by Rule 54 - Exoneration, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it issued the excessive discipline of a 10-day actual suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on March 2, 2006. Carrier's File No. 11-7-554. General Chairman's File No. 5-D-06 ANDERSON. BRS File Case No. 13850-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.

On January 6, the Carrier directed the Claimant to report for a formal Investigation on January 13, which was postponed and subsequently held on March 2, 2006, concerning the following charge:

“ . . . The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, with your alleged failure to protect your position on Wednesday, January 4, and Thursday, January 5, 2006. Therefore, you are hereby charged with alleged violation of Metra Employee Conduct Rule ‘Q,’ Paragraph No. 1 and Engineering Special Instruction #1, Paragraphs #4 and #6. . . .”

The subject Rule in dispute is Metra Employee Conduct Rule Q, Paragraph No. 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.”

Also at issue is Engineering Special Instruction No. 1, Paragraph No. 4, which quotes Employee Conduct Rule Q, Paragraph No. 1 verbatim. Paragraph No. 6 of the Special Instruction states:

“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, including voice mail messages, does not automatically give an employee an authorized absence.”

On March 10, 2006, the Claimant was notified that he had been found guilty as charged and was assessed a ten work days' suspension.

Both parties' arguments were the same in this case as expressed in Third Division Awards 40448 and 40449.

The Board determined that this dispute, which is the third in a series of five cases involving the Claimant, is identical to that contained in Award 40448. The Claimant's alleged violation in this instance was, in fact, part of one continuous violation which began on December 29, 2005, and has been addressed in the two aforementioned Awards. For the same reasons expressed in Award 40448 the instant claim is sustained as presented.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of May 2010.