

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40571
Docket No. SG-40186
10-3-NRAB-00003-070427
(07-3-427)**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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. (METRA):

Claim on behalf of B. J. Pierre, for payment of all lost wages with this discipline rescinded and any mention of this matter removed from her personal record and otherwise made whole as required by Rule 54 - Exoneration, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it imposed the excessive discipline of a 10 - day 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 July 18, 2006. Carrier's File No. 11-7-576. General Chairman's File No. 16-D-06 Pierre. BRS File Case No. 13867-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 May 3, 2006, the Carrier directed the Claimant to report for a formal Investigation on May 10, 2006, which was postponed and subsequently held on July 18, 2006, concerning the following charge:

“. . . The purpose of this investigation is to develop the facts, determine the cause and assess responsibilities, if any, when you allegedly reported to work on Monday, May 1, 2006, and then allegedly left your headquarters to attend a diversity training course being presented at 547 W. Jackson by the EEO department. By doing so you absented yourself without proper authority and were allegedly dishonest when questioned why you were away from your assignment. Therefore, you are hereby charged with alleged violation of Metra Employee Conduct Rule ‘N,’ Paragraph #3, Item #4 and Rule Q, Paragraph #1. Your work record, copy of which is attached will be reviewed at this investigation. . . .”

The aforementioned subject Rules read as follows:

“N. Employees must not be:
4. Dishonest”

and

“Q. 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.”

On July 26, 2006, the Claimant was notified that she had been found guilty as charged and the Carrier imposed a ten day suspension.

It is the position of the Organization that the transcript demonstrated that the Claimant mistakenly believed that she was scheduled for EEO training on the morning of May 1, 2006, and the record verifies that she rode the train downtown and then back to her headquarters after she discovered that she did not have any training scheduled for that day. According to the Organization, the Claimant accounted for all of her time beginning when she left her headquarters at Mokena up until she returned. It concluded that the Claimant made a minor error, not worthy of any discipline; therefore, it asked that the discipline be set aside and the claim sustained as presented.

It is the Carrier's position that the evidence indicates that the Claimant's statement that she was absent from work because "she was to attend an EEO class" at the Carrier's headquarters was false, self-serving and evidence of dishonesty. According to the Carrier, no evidence other than self-serving statements by the Claimant were produced to support the assertion that she was allegedly scheduled for a class at headquarters. It points out that the Claimant asserted she received her instructions to attend the class by "fax," but never produced the alleged fax directing her to attend the class. It further argued that if she had been scheduled for a class, which she was not, she still admitted to being at least one hour late. It concluded that the discipline was appropriate and should not be disturbed.

After thoroughly reviewing the transcript and record evidence, the Board has determined that on May 1, 2006, the Claimant was assigned as the Relief Maintainer at Mokena, Illinois, scheduled to work from 8:00 A.M. to 4:00 P.M. On that date the Claimant did not report to her work assignment, but instead went downtown to the Carrier's headquarters to attend an EEO class. Supervisors Hettman and Richardson testified that the Claimant was not scheduled to go to class and, in fact, no training was scheduled for her during calendar year 2006. Both Supervisors also testified that she told no one about the alleged class prior to the start of her shift.

Hettman discovered that the Claimant was not at her assignment when he had a conversation with Maintainer Egdorf. After receiving that information, Supervisor Hettman called the Claimant who advised him that she was on her way to the Carrier's headquarters.

The Claimant testified she arrived at Mokena sometime before 8:00 A.M. and, according to her, she called Maintainer Egdorf from her vehicle in the parking lot to advise she was going to be late for an EEO class and asked about the time of trains going downtown. The Claimant testified that the class was scheduled to start at 9:00A.M. whereas Supervisor Richardson stated that classes normally started at 8:00 A.M. Subsequently, the Claimant took the 8:38 A.M. train from Mokena that arrived at LaSalle Street Station at 9:45 A.M. At about 9:50 A.M., Supervisor Hettman phoned the Claimant to discuss her whereabouts and whether she had a class. After talking to Hettman, the Claimant called L. Piecuch of the EEO Compliance Department to confirm whether she was scheduled for a class. It took awhile to contact Piecuch who advised her that she was not scheduled for any classes. Subsequently, the Claimant returned to her assignment site at 12:36 P.M.

Our comparison of witness testimony leads to the conclusion that the Claimant's testimony was self-serving and not as credible as that of the Carrier's witnesses. The record further substantiates that the Carrier met its burden to prove that the Claimant violated Rule Q, Paragraph No. 1 because she did not report to work on time and was instead more than four and one-half hours late for her assignment. However, the record did not prove that the Claimant was dishonest; instead it only revealed that she was mistaken about being scheduled to attend an EEO class.

The only issue remaining is whether the discipline assessed was proper. Our review of the discipline imposed reveals that the Claimant was issued a Step 4 (10 workdays actual suspension) under the Carrier's Progressive Discipline Policy in Third Division Award 40571, which was upheld by the Board. Therefore, when she received the discipline in the instant case it was in actuality a repeat of Step 4. The Board finds and holds that the discipline was appropriate because it was not arbitrary, capricious or excessive; it was actually lenient.

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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 29th day of June 2010.