

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40685
Docket No. SG-40802
10-3-NRAB-00003-090082**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railroad**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern:

Claim on behalf of J. Rutledge, for compensation for all lost wages, including skill pay, with all rights and benefits unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when it issued the harsh and excessive discipline of a 5-day suspension in addition to a 25-day record 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 13, 2007. Carrier’s File No. K06076218. General Chairman’s File No. 07-021-KCS-185. BRS File Case No. 14020-KCS.”

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 incident leading to his suspension, Claimant J. Rutledge was assigned to the position of Signal Maintainer, Job No. 851, in Monroe, Louisiana. According to the Carrier, on May 23, 2006, the Claimant sustained an injury on duty but did not report the injury as required. The Carrier contends that the Claimant responded in the negative upon being directly asked if he had sustained an on-duty injury after complaining of back pain shortly after May 23, 2006. The Carrier was not aware that the Claimant alleged an on-duty injury until September 25, 2006, when it received a letter from the Claimant's attorney contending that the Claimant had been injured on the job on May 23, 2006.

By letter dated May 25, 2007, the Carrier directed the Claimant to report for a formal Investigation on June 20, 2007, to ascertain the facts and determine his responsibility, if any, in connection with the following charges:

- "1) your alleged failure to promptly report a personal injury you allegedly sustained May 23, 2006 and
- 2) your alleged failure to promptly report the alleged personal injury to a supervisor and complete the prescribed forms."

The Hearing was rescheduled and took place on August 15, 2007, pursuant to which, in a letter dated August 24, 2007, the Claimant was notified that he was assessed a 5-day suspension and a 25-day record suspension.

By letter dated September 7, 2007, the Organization appealed the decision based on the contention the Carrier failed to meet its burden of proof, and the discipline assessed was unwarranted and excessive. On October 31, 2007, Signal Engineer V. A. Jones denied the appeal. On November 26, 2007, the matter was appealed to Director of Labor Relations J. Albano. On January 25, 2008, the appeal was denied. On February 13, 2008, a conference was held and the parties were unable to resolve the matter.

According to the Organization, the discipline imposed upon the Claimant was unwarranted, harsh, and excessive. The Organization contends that the Carrier's burden of proof has not been met. The Organization asserts that the Carrier was arbitrary and capricious in its treatment of the Claimant, that the Carrier abused its discretion and that the Carrier's determination to discipline the Claimant was based on inconclusive evidence, thus rendering the discipline harsh and excessive. In addition, the Organization contends that the Claimant was denied a fair and impartial Investigation. While the Organization does not contest that the Claimant was injured, it submits that he reported the injury as soon as he was aware of it. The Organization concludes that the Carrier should now be required to overturn the discipline and make the Claimant whole for all losses.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Hearing in accordance with the requirements of the Agreement. According to the Carrier, a review of the transcript developed during the Hearing made it clear that the Claimant was guilty as charged. The Claimant was aware that he was obligated to report any workplace injury immediately; he did not comply with this requirement. Based on the instant offense, the discipline imposed was appropriate.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for that of the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325 and Third Division Award 16166.)

The Board has found substantial evidence in the record to uphold the Carrier's position. We note that the Carrier proved that the Claimant did not promptly report the injury that he sustained while on duty. Based on the nature of the offense, we cannot find that the penalty imposed was unreasonable, and we will not overturn it.

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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 1st day of November 2010.