

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40687
Docket No. SG-40917
10-3-NRAB-00003-090236**

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

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(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Claim on behalf of T. Webb, for the letter of reprimand to be rescinded and any reference to this matter removed from the Claimant’s personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when it issued a letter of reprimand to the Claimant without providing a fair and impartial investigation and without meeting its burden of proof in connection with an investigation held on November 8, 2007. Carrier’s File No. K06086278. General Chairman’s File No. 07-037-KCS-185. BRS File Case No. 14094-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.

According to the Carrier, on October 9, 2007, Claimant T. Webb failed to plan his work so as to avoid injury while attempting to straighten the rear shunt bracket of the hi-rail assembly on his Company vehicle in Baton Rouge, Louisiana, which resulted in a muscle pull in the lower calf of his left leg.

By letter dated October 16, 2007, the Carrier directed the Claimant to report for a formal Investigation on November 8, 2007, “. . . to ascertain the facts and determine your responsibility, if any, in connection with your alleged failure to plan your work to avoid injury while attempting to straighten the rear shunt bracket of the hi-rail assembly on KCS MW3687 near Mile Post 787.39 in Baton Rouge, Louisiana, at about 0915 hours October 9, 2007, resulting in a muscle pull in the lower calf of your left leg.”

The Hearing took place on November 8, pursuant to which, in a letter dated November 16, 2007, the Claimant was notified that he was assessed a written reprimand.

By letter dated December 21, 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 February 19, 2008, Signal Engineer V. A. Jones denied the appeal. On March 12, 2008, the matter was appealed to Director of Labor Relations J. Albano. On May 5, 2008, the appeal was denied. On June 10, 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 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 has 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 submits that the Claimant was denied a fair and impartial Investigation. The Organization concludes that the Carrier should now be required to overturn the discipline.

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 improperly used his leg to straighten the shunt bracket. 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 adequately plan his work and, as a result, he was injured. Based on the nature of the offense, we cannot find that the penalty imposed was unreasonable, and we will not overturn it.

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.