

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40910
Docket No. SG-41051
11-3-NRAB-00003-090422**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Belt Railway Company of Chicago**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Belt Railway of Chicago:

Claim on behalf of C. J. Sherry, for reinstatement to service with seniority unimpaired and compensation for all lost time and benefits, with any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 52, when it failed to provide a fair and impartial investigation and then issued the harsh and excessive discipline of dismissal against the Claimant without meeting its burden of proving the charge in connection with an investigation held on May 9, 2008. General Chairman’s File No. 08-04-BRC. BRS File Case No. 14175-BELT.”

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.

The Claimant was dismissed for failing to report to the testing room for an FRA random drug and alcohol test as instructed and then leaving the Carrier's property without authority. At the time of the incident, the Claimant had just over 12 months of service with the Carrier.

Although the Organization raised a number of procedural and evidentiary objections during the Investigation, our review of the record does not show any of them to have merit. For examples, it was not necessary for the person who signed the charge letter to be present for the Investigation. The record did not show him to have any relevant information about the substance of the charges. While it is true that several written statements were technically hearsay, the Claimant's own testimony authenticated the accuracy of their contents as they pertained to evidence that was relevant to the charges. The minor calendar date errors did not affect the substance of the statements. Finally, it is undisputed that the Claimant was on the Carrier's property after the starting time of his assignment when he was instructed to undergo the random test. Accordingly, he had reported for duty.

On the merits, it is undisputed, and confirmed by the Claimant's own admissions, that he was directed to report for the random test and that he left the Carrier's property without notifying any Carrier Official and without any proper authority to abandon his assignment. Moreover, the record does not establish any legitimate justification on his part, whatsoever, for failing to comply with the instructions to be tested.

Under the circumstances, and given the operation of the Carrier's Drug and Alcohol Policy, the Carrier's decision to terminate the Claimant's employment was not unreasonable, harsh, or excessive. Accordingly, the claim must be denied.

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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 10th day of March 2011.