

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 40950  
Docket No. SG-39838  
11-3-NRAB-00003-060667

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

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

**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 B. Stewart, for reinstatement to his former position with compensation for all lost wages, including skill pay, with all rights and benefits restored 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 dismissal 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 August 18, 2005. Carrier’s File No. K06066044. General Chairman’s File No. 05-091-KCS-185. BRS File Case No. 13670-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.

The Claimant was dismissed for inappropriate behavior while in possession of a company vehicle while on duty. At the time of the incident, the Claimant had some six years of service.

Because of the unusual nature of the behavior, it is not recounted here with specifics. Suffice to say that the facts taken from a Pittsburgh, Kansas, Police Department report demonstrate the Claimant's unusual behavior on August 1, 2005, at approximately 6:45 P.M. The Claimant was interviewed again by police officers on August 2, 2005. According to the information taken from the police reports, the Claimant provided two significantly different stories to explain his behavior on August 1. According to three other police reports, the Claimant had been previously involved in very similar behavior in October 2004 and twice more in October 2001. The two instances in 2001 led to a warning letter instructing him to cease such activities immediately. The warning, which the Claimant signed for on November 9, 2001, said he would not be warned again.

The evidentiary record is found to contain substantial evidence in support of the Carrier's disciplinary action. Accordingly, the claim must be denied.

**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 24th day of March 2011.