

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40954
Docket No. SG-41206
11-3-NRAB-00003-0100072**

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: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link, Inc.:

Claim on behalf of R. Snell, for reinstatement to service with compensation for all time lost and his seniority and employment benefits unimpaired and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Article 13 (Discipline), when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial hearing and without meeting its burden of proving the charges in connection with a fact finding session held on March 9, 2009. General Chairman’s File No. 09-018-MRL-87. BRS File Case No. 14314-MRL.”

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 using a company vehicle for personal business, behavior that was disrespectful to the Carrier's image, failure to report for duty on February 19, 2009, and failure to notify his supervisor and obtain permission for his absence. At the time of the incidents, the Claimant had some four years of service with the Carrier. According to the Hearing transcript, his prior work record was clear of discipline.

The record does not raise any procedural objections that require our involvement. Turning to the merits, it is undisputed that the Claimant did make some personal use of a Carrier vehicle on February 18, 2009, to make a side trip to deal with a personal problem with his wife at a local bar. His actions at the bar resulted in his arrest later that evening for assault. In connection with breaking his wife's cell phone, the Claimant recognized his action was misconduct in violation of Rule 1.9. He was also given a breathalyzer test for blood alcohol content approximately two hours after the bar incident. He blew a high number but denied consuming any alcohol until after he had returned to his home. He was not arrested until after he had consumed alcoholic beverages at his home for an undetermined amount of time before the police arrived. Given the state of the evidence on the alcohol consumption, the Carrier did not find the Claimant guilty of driving a company vehicle after having consumed alcoholic beverages. It is also undisputed that the Claimant's overnight incarceration prevented him from protecting his assignment on February 19, 2009. In addition, the record establishes that the Claimant failed to notify his supervisor of his impending absence because he was unable to do so until after his release from jail the following afternoon.

Given the foregoing, we find the record contains substantial evidence in support of the Carrier's determination that the Claimant violated the Rules for which he was cited in the Carrier's disciplinary decision letter of March 20, 2009. That said, however, there are some mitigating factors present that warrant consideration of granting the Claimant a "last chance" to preserve his employment that was previously clear of misconduct.

Accordingly, the Carrier is directed to offer the Claimant reinstatement to his former employment status with seniority and the other attributes of that status unimpaired but without any backpay associated with the time he has been out of service. If he accepts the offer, the Claimant's reinstatement is subject to him

successfully completing the Carrier's usual return-to-work requirements. In addition, the Claimant's dismissal is converted to a disciplinary suspension without pay for the time he has been out of service.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of March 2011.