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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40956
Docket No. SG-41285
11-3-NRAB-00003-100155**

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 April 16, 2009. General Chairman’s File No. 09-021-MRL-87. BRS File Case No. 14325-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 several forms of misconduct when certain matters were brought to the Carrier's attention in the form of a faxed statement with photographs of damage to property. The statement was authored by the Claimant's former wife and had been supplied to a local police department as part of its investigation into the Claimant's behavior on February 17-18, 2009. The behavior of February 18 led to the Claimant's overnight incarceration and resulted in an Investigation leading to earlier discipline. That discipline was the subject of Third Division Award 40954. The content of the faxed statement expanded upon the details of the Claimant's behavior that night and also supplied new information about the Claimant's behavior the previous day and evening, February 17, 2009, and into the morning of February 18 that had not surfaced in the earlier disciplinary action. The facts depicted in the faxed statement were confirmed by the testimony of the Claimant's former wife during the instant Investigation.

The Claimant flatly denied all allegations of misconduct advanced by his former wife. Nonetheless, our review of the record shows it to contain substantial evidence supporting the Carrier's findings of guilt as described in its disciplinary letter dated May 6, 2009. According to that letter, the Claimant did not comply with motor vehicle laws, used his company vehicle for personal purposes, drove the company vehicle after consuming alcoholic beverages, caused damage to the vehicle and the personal property of a third party, brought disrespect upon the Carrier's image, and did not testify truthfully in the previous Investigation into his behavior on February 18, 2009.

Given the state of the record in this matter, we find no proper basis for disturbing the Carrier's disciplinary decision.

AWARD

Claim denied.

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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.