

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31490
Docket No. SG-31928
96-3-94-3-258

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Southern Pacific Transportation Company (SP):

Claim on behalf of J.P. Walton for reinstatement to service with compensation for all time and benefits lost as a result of his dismissal from service, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline following an investigation held on April 12, 1993. Carrier's File No. SIGD93-5. General Chairman's File No. SWGC-580. BRS File Case No. 9328-SP."

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 waived right of appearance at hearing thereon.

On February 24, 1993, Claimant was notified of an Investigation, to be held March 10, 1993, concerning Claimant's alleged violations of Rules 604, 607, and 2240. The Investigation was postponed to and held on April 12, 1993. On April 26, 1993, Claimant was notified that he had been found guilty and that he was dismissed from service.

The Organization contends that the Hearing was not fair and impartial and that the findings of guilt are not supported by the evidence. The Organization argues further that the penalty of dismissal was arbitrary, capricious and excessive.

Carrier contends that the Hearing was fair and impartial and that ample evidence supported the findings of guilt. Carrier further maintains that dismissal was justified.

The Board has reviewed carefully the record developed on the property. We find that the Hearing was conducted in a fair and impartial manner and that the findings of guilt are supported by substantial evidence.

However, considering all of the surrounding facts and circumstances of this case, the Board finds that the penalty of dismissal was excessive. Accordingly, the claim will be sustained to the extent that the Claimant shall be restored to service with seniority and other Agreement benefits unimpaired, but without any compensation for time lost while 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 23rd day of May 1996.