

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31960
Docket No. SG-32325
97-3-95-3-163**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Soo Line Railroad Company (SOO):

Claim on behalf of R. E. Carlson for reinstatement to service with seniority unimpaired, with payment for all time and benefits lost in connection with his dismissal from service, and with this discipline removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 32, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline following an investigation conducted on October 18, 1993. Carrier's File No. 5-00061-002. BRS File Case No. 9556-SOO."

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.

This case arose when the Claimant was dismissed from the Carrier's service after being found guilty of excessive absenteeism. Carrier contended that the Claimant had failed to make any attempt to secure his assignment, training school, during the weeks of September 27 and October 4, 1993. Furthermore, based on his previous personnel record which included disqualification from an ARASA Technician position because of excessive absenteeism, the Carrier contends that it is fully within its rights to dismiss the Claimant.

The Organization filed an appeal contending that the Claimant had been on medical leave of absence during the period in question and, in fact, did notify his supervisor that he could not attend the training because of the medical reasons.

The Carrier denied the claim contending that although the Claimant did notify his supervisor of his absence, the supervisor never authorized the absence. Furthermore, based on his record which indicated that he had been progressively disciplined for similar offenses, the Carrier argued that it was fully within its rights to terminate the Claimant.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit.

With respect to the substantive issue, this Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being absent without proper authority during the weeks of September 27 and October 4, 1993. The record is clear that the Claimant had been instructed to attend a training session in Calgary during the weeks in question. This Board recognizes that the Claimant had been on medical leave prior to the time of the training session, but there was no medical reason why the Claimant was unable to attend the training session in Calgary. Claimant actually stated that it had been his intention to go to Calgary notwithstanding his hand injury. However, Claimant became involved in what apparently was his seventh driving under

the influence of alcohol situation and in this case, it also involved a hit-and-run automobile accident. Claimant stated that he expected to be jailed for the offense.

This Board finds that the Claimant had made reservations to go to the training session in Calgary and his leave of absence relating to his wrist injury did not play any part in his being absent without leave. Moreover, there is no evidence that his hit-and-run accident while he was DUI had any relationship to his failing to attend the training session in Calgary. Finally, we find that the Claimant did not request or receive a leave of absence which would have given him permission to not attend the training session in Calgary. Hence, we find that there is no question that the Claimant was guilty of being absent without leave and thereby subjected himself to discipline.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant's disciplinary record indicates that he has previously received numerous counseling sessions relating to other failures to protect his assignment. In addition, he was previously disqualified from a supervisor's position for failing to protect his assignment. Finally, he had previously been issued a 30 day suspension for a similar offense. Given the previous disciplinary background of the Claimant, and the seriousness of his improper action in this case, this Board finds that the Carrier did not act unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment.

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 19th day of March 1997.