

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32405  
Docket No. SG-32809  
98-3-96-3-134**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Burlington Northern Railroad**

**STATEMENT OF CLAIM:**

**“Claim on behalf if the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad (BN):**

**Claim on behalf of J.E. Kennedy for payment for all time and benefits lost in his suspension from service beginning January 21, 1995, and for removal of the entry of discipline from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it failed to provide the Claimant with a fair and impartial investigation and disciplined him without meeting the burden of proving its charges in connection with an investigation conducted on December 22, 1994. Carrier’s File No. SIA-95-04-07AA. General Chairman’s File No. B-13-95(D). BRS File Case No. 9829-BN.”**

**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.**

On December 9, 1994 Claimant was told by his Supervisor that his voice mail message on his company telephone was inappropriate. Claimant was instructed to change the voice mail message. He did so, but the second voice mail message stated his Supervisor was not allowing him to have personal voice mail messages. Claimant was again instructed to change his voice mail message and was assessed a five day suspension for failure to follow his Supervisor's instructions.

The Board finds there is sufficient evidence in the record to support the charge. The Board also finds the Organization's claim of improper notice is unsupported by probative evidence. The Notice of Hearing was timely mailed by certified mail to the correct address. Claimant did not pick up his mail in a timely fashion. Any delay in his receiving notice is due to his inaction.

**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 21st day of January 1998.**