

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32574
Docket No. SG-33744
98-3-97-3-179

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore &
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of S. A. King for payment of all time lost as a result of his suspension from service for 60 days and for any reference to this discipline to be removed from his record, account Carrier violated the current Signalmen's Agreement, particularly Rule 50, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline without meeting the burden of proving its charges in connection with an investigation conducted on February 21, 1996. Carrier's File No. 15(96-108). BRS File Case No. 10217-B&O."

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 advised on February 14, 1996 to attend an Investigation to determine facts and place responsibility, if any, in connection with his alleged non-compliance with the Leadman's instructions on February 10, 1996 and with a Foreman's instructions on February 13, 1996. In both instances the Claimant allegedly did not obtain a double room in accordance with CSX policy while on work assignment. Pending the outcome of the Investigation, which was subsequently held on February 21, 1996 at Vincennes, Indiana, the Claimant was held out of service. After the Investigation was held the Claimant was advised on March 21, 1996 that he been found guilty as charged and he was assessed a 60 calendar day suspension from February 14 to April 14, 1996.

The discipline was appealed on the property in the proper manner by the Organization under Section 3 of the Railway Labor Act and the operant Agreement. Absent settlement of the dispute between the Organization and the Carrier over the discipline received by the Claimant the claim was docketed before the Board for final adjudication.

As a preliminary matter the Organization raises procedural objection on grounds that the Carrier violated Rule 50(b) by not following proper time-lines in issuing discipline after the Investigation was held. Upon review of the record the Board concludes that the objection must be dismissed. Rule 50 does not require a 30 day window period for receipt of a discipline notice by a Claimant, but only such period for rendering such notice by the Carrier. This was properly done.

At the time of the incidents under scrutiny in this case the Claimant held a Signalman position on Gang 7X13.

A February 14, 1996 letter which was written by the Lead Signalman states the following:

"I did inform Mr. S. A. King that he was to report to Vincennes, Indiana. I also informed Mr. King he was to check into a room with another co-worker upon arrival. Our conversation took place on Saturday, February 10, 1996 by telephone. Our conversation took place account of Mr. King attending Lineman's school in North Carolina the previous week."

Further, testimony revealed that the Claimant stated, after he was told on February 13, 1996 to obtain a double room, that he was staying in a single room, but had no intention of paying for it.

According to testimony at the Investigation by the Signal Foreman on Gang 7X13 on whose team the Claimant worked with four other Signalmen, he instructed the Claimant to obtain a double room in Vincennes, Indiana, at the Executive Inn on February 13, 1996. The motel was Gang 7X13's designated headquarters. CSX policy for lodging, according to this witness, provides that the Foreman and Leadmen get their own room, and the rest of the men are doubled. Testimony by this witness is that the Claimant did not obtain a double room, but stated that he was "... getting his own room. . . ." The testimony by the Foreman is corroborated by a fellow Signalman who states that he was in the hotel lobby when he heard the Foreman tell the Claimant to share a room because it was Company policy to do so. According to the Foreman, the Claimant was also not properly signing the CSX Corporate Lodging Card Form, but instead was signing only the motel forms when checking in and out of motels used as designated headquarters.

Testimony by the Claimant is that he was aware of company policy regarding corporate lodging, and that he had understood the directives which were given to him. When he arrived on February 10, 1996 the Claimant testified that he arrived late and that there were no non-smoking double rooms so he took a single one. He stated he did not obey the order to share a room on February 13, 1996 because he was the odd man out and would have been by himself anyway. Further, he stated that he decided to keep his single room in lieu of getting a double room which, he implied, might have been more expensive for the Carrier. On February 12, 1996 he had a single room because he arrived quite late in the evening and did not want to disturb any of his fellow workers.

Upon review of the record the Board can but conclude that reasonable minds could not accept the position of the Claimant in this case. The Claimant would have the Board believe that he thought that the directives given to him by supervision were to mean that he was supposed to have moved to a double room by himself, rather than to a room with another Signalman which was consistent with CSX policy, when he had been explicitly told to do so on two different dates. The Claimant is an experienced Signalman, and he has considerable experience with CSX policy. He undoubtedly knew the meaning of the orders given to him. Everyone else who testified at the Investigation certainly understood. For whatever reasons, the Claimant was, pure and simple,

insubordinate. In view of his past record, which included a suspension and a number of disqualifications, the determination by the Carrier was neither arbitrary nor capricious and the Board rules accordingly.

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 29th day of April 1998.