

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32807
Docket No. SG-33927
98-3-97-3-449**

The Third Division consisted of the regular members and in addition Referee James E. Yost when award was rendered.

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

STATEMENT OF CLAIM:

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

Claim on behalf of J.L. McNeil for reinstatement to service with his record cleared and with compensation for all time and benefits lost as a result of his dismissal following an investigation held on June 26, 1996, account Carrier violated the current Signalmen's Agreement, particularly Rule 41, when it did not provide the Claimant with proper notice of the investigation, failed to provide him with a fair and impartial investigation, and assessed harsh and excessive discipline against him. Carrier's File No. 15(96-208). BRS File Case No. 10212-B&OCT."

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.

Claimant was employed by Carrier as a Signal Maintainer with approximately 19 years of service and no record of prior discipline.

Carrier issued a notice dated June 18, 1996, advising Claimant that he was removed from service pending a formal Investigation based on the following charges:

- “(1) Being absent from your assignment as Signal Maintainer at Forest Hill, Illinois without proper notice or permission from proper authority on June 17 and 18, 1996.**
- (2) Conduct unbecoming an employee of CSX Transportation, Inc., in that you were reportedly arrested and charged with reckless homicide and drunken driving in the death of a 13 year old boy and the injury of a 4-year old boy who were allegedly run down as they crossed a Chicago street at approximately 8:20 p.m. on Saturday, June 15, 1996.”**

The Investigation was scheduled for June 21, 1996, but at the request of the Organization it was rescheduled and held on June 26, 1996. Following the Investigation, Carrier rendered its decision on July 3, 1996, finding Claimant guilty of the charges and assessing discipline of dismissal from service.

The Organization filed claim under date of July 15, 1996, appealing the dismissal on grounds that the letter of dismissal was not timely received; that Carrier was not mentioned in the news article concerning Claimant's arrest; therefore, there was no showing that Carrier was damaged by Claimant's arrest and accordingly, the charge of conduct unbecoming an employee was not proven; and that the discipline assessed was harsh and excessive.

The claim was denied by letter dated September 10, 1998, on the grounds that evidence and testimony contained in the transcript proved Claimant guilty of the charges. Further, that the letter dated July 3, 1996 assessing discipline was within the mandates of Rule 41.

The parties conferenced the claim on December 4, 1996, but were unable to reach satisfactory resolution. The claim is now properly before the Board for adjudication.

Before going into the merits, we must first dispose of the procedural issue raised by the Organization, i.e., was the decision of Carrier following the Investigation made timely.

Rule 41 - INVESTIGATION, reads as follows:

- “(a) An employee who has been in the service more than sixty (60) days will not be disciplined or dismissed without investigation, at which investigation he may be represented by a duly accredited representative. He may, however, be held out of service pending such investigation. The investigation will be held within seven (7) days of the date when charged with the offense or held from service. A decision will be rendered within seven (7) days after completion of investigation.”**

We conclude that the decision made following the closing of the Investigation on June 26, 1996 was timely rendered by Carrier on July 3, 1996. This is so for the reason that the Rule states “rendered” and makes no reference to date received by the Organization. The decision rendered July 3, 1996 was mailed in a timely manner properly addressed, and Carrier cannot be held responsible for the time consumed by the U. S. Postal Service in delivery of the decision to the Organization.

The Organization’s assertion that Carrier “. . . failed to provide [Claimant] with a fair and impartial Investigation, . . .” as set forth in its Statement of Claim, is not properly before the Board because the on-property record of handling does not reveal that it was raised and made a part of the handling on the property as is required by Rules of Procedure set forth in NRAB Circular No. 1 issued October 10, 1934. However, if we could properly consider the question, it could not be sustained as study of the transcript reveals beyond any question that Carrier afforded Claimant a fair and impartial Investigation.

On merits, the transcript of Investigation reveals that Claimant acknowledged that his absence on June 17 and 18, 1996 was without permission. Further, that he did

not notify his Supervisor that he would be absent. Accordingly, the charge of "absent from your assignment . . . without proper notice or permission" was sustained.

The charge of conduct unbecoming an employee of CSX Transportation Inc, resulted from an off duty, off property occurrence reported in a newspaper article on June 17, 1996, the pertinent part of which is set forth in Item 2 of the charges, supra.

The Organization contends that Carrier is without authority to discipline an employee for off duty conduct where Carrier is not shown to have been referred to or involved in any manner.

The Carrier contends that the off duty conduct admitted to by the Claimant is of such magnitude as to completely destroy its confidence in Claimant's ability to perform his work safely and in concert with his coworkers, and accordingly, Claimant is subject to Carrier discipline for his off duty conduct on June 15, 1996.

We reviewed the several prior Awards cited by the Organization on the subject of discipline for off duty conduct and conclude that the consensus of the Board is that to justify discipline for off duty conduct, including discharge, there must be a showing of evidence of damage to the Carrier, with the exception that discipline is permitted where the off duty conduct affects the employer-employee relationship.

Following this guideline, we are convinced that Claimant's admitted off duty conduct on June 15, 1996 adversely affected the employer-employee relationship and subjected him to discipline by Carrier.

Claimant was properly found guilty of the charges and subject to discipline for his conduct. However, in view of his approximately 19 years of discipline-free service, we are of the opinion dismissal was harsh and excessive and he should be given the opportunity to redeem himself with Carrier and his fellow employees.

The dismissal will be reduced to an extended suspension, and Claimant will be reinstated with seniority and all other contractual benefits unimpaired, but without compensation for any lost time, subject to his passing a physical examination and any requalification required of employees returning to service after an extended absence.

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 September 1998.