

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32808
Docket No. SG-33934
98-3-97-3-451**

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 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 K.S. Harris for payment of all time lost as a result of his suspension from service for 30 days, 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 June 19, 1996. Carrier's File No. 15(96-205). BRS File Case No. 10223-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.

On the date of the incident giving rise to this dispute Claimant was assigned as an Assistant Signalman on Signal Gang 7X19.

He was absent from his assignment on June 10 and 11, 1996. On June 11, 1996 Carrier notified Claimant to attend a formal Investigation on June 19, 1996 "to determine the facts and place your responsibility in connection with your failure to report to work on June 10, and June 11, 1996." Specifically, Carrier charged Claimant "with absenting yourself from duty without permission on June 10 and 11, 1996."

The Investigation was held as scheduled and on July 3, 1996 Carrier advised Claimant that "the transcript of this investigation proves conclusively that you were absent from duty without permission on the dates of June 10, and June 11, 1996, as charged . . ." and suspended him 30 days.

An appeal was filed on July 12, 1996 with Carrier's Director Employee Relations asserting that the discipline was excessive and unfair due to the inconsistency in the testimony of the Signal Foreman and the General Supervisor Signal Construction.

The Director Employee Relations denied the appeal on September 10, 1996 asserting that facts adduced at the Investigation revealed Claimant did not obtain authority for his absence and that same was corroborated by Claimant's testimony. Carrier further asserted that the discipline was not excessive or unfair as Claimant's absence placed it in a position whereby it was unable to accomplish the work programmed.

The appeal was conferenced by the parties on October 21, 1996, but they were unable to reach resolution of the matter. The claim is now properly before this Board for final adjudication.

Before proceeding to the merits, we note that the Organization asserts a violation of Rule 50 in its claim filed with the Board, in that Carrier allegedly failed to provide Claimant with a fair and impartial Investigation.

The Board is prohibited from considering the question of whether a fair and impartial Investigation was provided the Claimant for the reason that the record does not reveal that the question was raised and made a part of the handling on the property as is required by the Rules of Procedure set forth in NRAB Circular No. 1 issued

October 10, 1934. But even if we could properly consider the question, it could not be sustained because Claimant testified at the close of the Investigation that it was conducted in a fair and impartial manner and in accordance with the Agreement.

On the merits, study of the Investigation transcript convinces the Board that the charge of being absent without permission on June 10, 1996 cannot be upheld. This is so for the reason that Claimant had made his Foreman aware that he had to attend court on June 10, 1996 and on June 9 he called his Foreman and specifically advised him that he would be absent on June 10 due to a court date. The Foreman testified that he made no comment in response, i.e., he neither denied nor granted Claimant permission to be absent. The Foreman's silence we believe indicates permission to be absent and we so hold.

The charge of absence without permission on June 11, 1996 was sustained by Carrier as the transcript of Investigation reveals that Claimant failed to contact his Foreman to seek permission to be absent and further to give a good and sufficient reason during the Investigation for his absence.

The transcript reveals that Carrier's General Supervisor Signal Construction held a coaching and counseling session with Claimant regarding his absenteeism on September 18, 1995. Therefore, he should have known that absence without permission and/or good and sufficient reason would not be tolerated by the Carrier. Claimant's failure to comply subjected him to discipline.

On the question of the discipline assessed, based upon the Board's findings that Claimant's absence on June 10, 1996 must be considered authorized, and the June 11, 1996 absence without permission, we will reduce the discipline assessed to a 15 day actual suspension and direct that Claimant be compensated for time lost in excess thereof by Carrier's original assessment of 30 days actual suspension.

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.