

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32985
Docket No. SG-33188
98-3-96-3-639**

The Third Division consisted of the regular members and in addition Referee Katherine Gerstenberger when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (former Seaboard Coast Line):

Claim on behalf of W. B. Mobley for reinstatement to service with compensation for all time and benefits lost as a result of his dismissal from service and for his record to be cleared of all charges in connection with this discipline, account Carrier violated the current Signalmen's Agreement, particularly Rule 47, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him in connection with an investigation conducted on September 19, 1995. Carrier also violated Rule 47 when it failed to notify the Claimant and his representative of its decision in this matter within 20 days after completing the investigation. Carrier's File No. 15(95-262). BRS File Case No. 9936-SCL.”

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 October 9, 1995, Claimant was dismissed from service after an Investigation on the charge that he failed to properly perform his duties on August 25, 1995. Claimant was working as a Signal Maintainer on a highway crossing signal system at SR 360-A (Milepost SP 744.21) in Madison, Florida. While he was replacing a circuit card at the crossing, the gates came down, blocking traffic. Drivers became angry at the delay and began blowing their car horns. In order to relieve the traffic congestion, Claimant turned the RX relay upside down, which raised the gates.

Claimant testified that during the workday, he experienced stomach cramps and left the crossing to look for a restroom. Before leaving the crossing, Claimant locked the signal case, leaving the XR relay upside down and the signal system inoperative. While he was in the restroom, Claimant was paged by Carrier's Operations Center and instructed to report to another location for a service call. After answering the other call, Claimant went home for the day.

At approximately 5:15 P.M., train Q60224 reported to the Dispatcher that when it passed the crossing at SR 360-A, the gates failed to operate and the signal lights did not flash. Signal Maintainer Medders was dispatched to the crossing and discovered that the XR relay was inverted, rendering the gates and warning lights inoperative.

On September 19, 1995, an Investigation was conducted to determine Claimant's responsibility, if any, in connection with the grade crossing activation failure at SR 360-A on August 25, 1995. At the Investigation Claimant acknowledged that turning over the XR relay violated Rule 1.304 of the Carrier's Signal Rules and Instructions because permission to do so was not obtained from the Supervisor Signals and proper measures were not taken to ensure the safe operation of trains.

By letter dated October 9, 1995, Carrier advised Claimant that he had been found guilty of the charges, and that his employment was terminated immediately. On October 12, 1995, prior to receipt of Carrier's October 9 letter, the Organization filed a claim

on behalf of the Claimant, contending that the Carrier was in violation of Rules 47 and 48 of the Agreement, inasmuch as the Carrier had failed to advise either the Claimant or his representative of its decision on the charges against Claimant within 20 days of the Investigation. On October 23, 1995, after receipt of Carrier's October 9 letter, the Organization filed an appeal of Claimant's dismissal.

The Organization contends that the Carrier violated Rule 47 by failing to advise Claimant or his Representative of its decision on the charges against Claimant within 20 days of the Investigation. The Organization further asserts that by failing to meet the 20-day notice requirement prescribed by Rule 47, Carrier denied Claimant his right to due process and forfeited its right to discipline Claimant. Finally, the Organization submits that the penalty imposed by the Carrier in this case was harsh and excessive.

The Board carefully considered the Organization's procedural arguments and finds them to be without merit. We agree, however, that the penalty of dismissal was excessive under the facts of this case. The record that is properly before us contains no evidence that Claimant, a 19-year employee, had prior disciplinary problems. In view of Claimant's years of service with the Carrier and the absence of evidence of prior discipline, the Board finds that Claimant's dismissal was harsh and excessive. Accordingly, Claimant's dismissal shall be reduced to a 60-day suspension, and he shall be reinstated to service provided he passes the customary return-to-work physical examination and meets all qualification procedures. Claimant shall be made whole for wages and contractual benefits lost as a result of his dismissal, and his record shall be amended to so reflect.

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 December 1998.