

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33321
Docket No. SG-34658
99-3-98-3-322

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 L. H. Capps for reinstatement to the position of Signal Inspector with compensation for all lost wages and benefits resulting from his suspension from service and demotion following an investigation held on June 10, 1997, and for any reference to this matter to be removed from his record, 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 imposed harsh and excessive discipline against him without meeting the burden of proving the charges. Carrier’s File No. 15 (97-139). General Chairman’s File No. SCL/40/97. BRS File Case No. 10665-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.

The Claimant was assigned to a position of Signal Inspector. This position regularly works unsupervised and makes independent judgments.

By notice dated June 2, 1997, Claimant was instructed to attend a formal Investigation to be held on June 10, 1997. The Notice of Investigation read as follows:

"You are directed to attend a formal investigation on June 10, 1997, at the Holiday Inn Airport, exit 49, 1944 Cedar Creek Road, Fayetteville, NC 28302, phone 910-323-1600, at 1300 hours, to determine the facts and place your responsibility in connection with the hours of service violation which occurred on April 7, 1997 while performing repairs to grade crossing warning system in Four Oaks, NC and April 10, 1997 while working to repair/restore damage to the Signal system between Four Oaks, NC and Alaska, NC.

You are charged with failure to properly perform your duty in accordance with CSX Train Control and FRA rules.

You are being withheld from service pending this investigation.

You may be represented, if you so desire, in accordance with the provisions of your working agreement, and you may arrange to have present witnesses who have knowledge of the matter under investigation."

The Investigation was held as scheduled at which time Claimant was present, represented and testified on his own behalf. Following completion of the Investigation, Claimant was notified by letter dated June 27, 1997, as follows:

"Facts developed at this investigation prove conclusively that you are guilty as charged and are assessed a 10 working day suspension. Furthermore, you are restricted from holding an Independent or Lead Maintainer's position for a period of twelve (12) months from this date.

You may return to work immediately and are eligible for any lost straight time wages since June 11, 1997.

You have been off work more than 15 days and will require one half of day safety training which is to be arranged by your supervisor."

Subsequent appeals from the discipline as assessed were handled in the customary manner on the property and, failing to reach a settlement, the case has come to the Board for final and binding resolution.

From the case record, it is apparent that on both of the dates in question Claimant's supervisor was off duty on vacation. The record also reveals that Carrier's first knowledge of the hours of service violations came about when the Claimant himself informed the supervisor of the events after the supervisor had returned from vacation. The record is not clear as to exactly when this occurred. The first formal action taken by Carrier on the subject was the Notice of Investigation dated June 2, 1997, at which time Claimant was withheld from service. From the incident dates until June 2, Claimant continued in service performing his normal duties.

The record of the Investigation is replete with evidence and testimony which indicates that the Claimant is a good employee. He is "always available"; he "performs his duties in a professional manner"; he received a "Cut-Through-the-Knot" Award from Carrier for a "can-do' team spirit and for getting the job done in an effective and expedient manner despite obstacles of many kinds." Even the Town of Four Oaks, North Carolina, where the incidents in question occurred, congratulated the Carrier for promptly resolving crossing signal problems in their community.

There is no question but that Claimant, in his zeal to resolve potentially dangerous situations on April 7 and April 10, 1997, remained on duty beyond the maximum time allowed by the Hours of Service Act. There is no question but that Claimant was, at all times pertinent in these instances, concerned only with the welfare of the Carrier. There is no question but that Claimant does, in fact, have a good service and discipline record. There is also no question but that the Hours of Service Act provisions are - and must be - mandatory. However, having said that, the Board is faced with a situation in which the employee was withheld from service, investigated and assessed formal discipline nearly two months after the incidents that precipitated the action.

The Board has often held that formal discipline to be effective should be prompt and instructive rather than delayed and punitive. It has been acknowledged that the Board should not substitute its judgment for that of the Carrier in discipline matters. However, it is a fact that each time a Board of Adjustment reviews a discipline case it is, in one degree or another, placing its judgment on the facts of a particular case. In this case, the facts and evidence - in the judgment of the Board - do not support an assessment of formal suspension from service. Because it obviously was the opinion of the Carrier that this employee should not, for a period of time, hold an independent judgment position in order to impress on him the seriousness of the Hours of Service Act provisions, the Board will not substitute its judgment in that regard.

Therefore, the discipline as assessed is modified to exclude the 10-day suspension. The remainder of the discipline as assessed will stand. Claimant should be made whole for the time lost during the 10-day suspension period.

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 17th day of May 1999.