

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33386
Docket No. SG-34413
99-3-98-3-20**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

STATEMENT OF CLAIM:

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

Claim on behalf of M. R. Efaw 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 January 28, 1997, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50, when it did not provide the Claimant with a fair and impartial investigation, and assessed harsh and excessive discipline against him. Carrier’s File No. 15 (97-67). BRS File Case No. 10481-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 January 24, 1997, the Claimant was notified to appear for a formal Investigation into the charges of violating CSX Operating Rules and failing to properly perform his work safely on January 20, 1997.

On February 24, 1997, the Claimant was notified that he had been found guilty as charged and consequently, dismissed from the Carrier's service.

On March 27, 1997, the Organization appealed the dismissal contending that the Claimant was not afforded a fair and impartial Hearing, because the Carrier refused the Claimant the right to question his accusers. Furthermore, the Organization pointed out that Train No. R138 did not enter the Claimant's territory on January 20, 1997. On May 22, 1997, the Carrier denied the appeal.

The Board reviewed the procedural arguments raised by the Organization, and although the Hearing was less than perfect, we believe that the Claimant's rights were protected. Consequently, the Organization's procedural arguments are rejected by the Board.

With respect to the substantive issue, the Board reviewed the evidence and testimony in this case, and we find sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier Rules and procedures when he gave the Signal Foreman permission to work on switches and then released trains onto the track. The Claimant was the employee in charge, and he was responsible for ensuring that the track was safe for train movement. The Claimant failed to do this when he released Train No. R138 into the area. The Claimant was negligent by not ensuring that the track was safe before releasing the train.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

Given the lengthy seniority of the Claimant and his previous disciplinary record, the Board must find that the Carrier acted unreasonably and arbitrarily when it terminated his employment. The principles of progressive discipline require that the Claimant be given a lengthy suspension in response to this wrongdoing on his part. In addition, the Claimant shall be required to re-qualify in his former position through a

training period and strict testing prior to going back onto this safety-sensitive job. The Board will order that the Claimant be reinstated, but without backpay and that the time he was out of service shall be considered a lengthy 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 13th day of July 1999.