

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34082
Docket No. SG-34488
00-3-98-3-125**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and Ohio
(Railway Company - Pere Marquette)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O-PM):

Claim on behalf of R. G. Melvin for payment for all time lost, including any overtime, as a result of his suspension from service following an investigation on February 19, 1997, and for all reference to this matter to be removed from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 701, when it disciplined the Claimant without providing him with a fair and impartial investigation. Carrier’s File No. 15(97-72). General Chairman’s File No. 97-30-PM. BRS File Case No. 10413-C&O(PM).

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 received a 30 working days suspension subsequent to an Investigation held on February 19, 1997. The Carrier determined that the Claimant had failed to timely report an injury as alleged in its February 12, 1997 directive to attend the Investigation. The Carrier denied the Claimant the right to bypass the Investigation utilizing Operation Prevention and found his guilt supported by testimony that he had purposely failed to make an injury report in a timely manner.

In addition to arguing that the Carrier failed to prove its charges, the Organization argues that there were serious procedural errors. The Organization maintains that the Carrier 1) failed to provide a complete transcript, 2) violated Rule 701 requiring that the Hearing be held "no sooner than ten (10) and no later than fifteen (15) days of the date charged," 3) failed to properly inform the Claimant in writing of the Hearing, 4) suppressed evidence and 5) conducted a biased inquiry. The Organization also argues that the Carrier failed to act in an even handed way when it denied the Claimant his right to enter Operation Prevention, although it allowed two other employees to do so.

The Carrier argues on the property that the allegations of procedural violation are incorrect. It maintains that the Claimant received proper notice, had a timely and proper Investigation and that the Claimant was given all of his rights under the Agreement to a fair and impartial Investigation. Contrary to the Organization's allegations, the Carrier argues that the evidence fully supported the charges. It further maintains that there was no disparate treatment afforded the Claimant when he was not permitted to utilize Operation Prevention to bypass the Investigation.

As in any discipline case, procedural issues do supercede a consideration of the merits. The Board will not consider the merits of a claim if the parties have negotiated procedural rights and then violated them. In the instant case, the Organization alleges numerous violations and each has been seriously considered. The Organization maintains that since the Claimant was charged on February 12 and the Investigation was held on February 19, 1997, it violated Rule 701 in holding the Hearing seven days after charge. The Investigation was recessed to obtain a ruling from Employee Relations. The on-property record indicates that the Organization was given the right to have the Investigation postponed. Having continued, and without any evidence whatsoever that in deciding to proceed it prejudiced the Claimant, the objection lacks merit. Similarly, our review finds that the Claimant was properly notified, even though the actual written notice was not in his hands at the time of the Investigation. Nor do

we find any suppression of evidence, lack of Agreement due process, inability to prepare a defense or other procedural error. Although the Organization requested by letter dated February 16, 1997 that copies of the Carrier's exhibits and evidence should be provided the day before the Investigation, there is no Rule requiring disclosure in the Agreement. Therefore, no violation occurred. See, for example, Second Division Awards 12971, 10790, 6638, 6382; Third Division Awards 32452, 32384, 31517, 14187, 13672, 13671; Fourth Division Award 3782.

On the merits, the testimony indicates the following. The Claimant reported an on-duty injury February 6, 1997. He testified that the injury occurred the previous Wednesday on February 5, 1997, while riding in a company vehicle that struck a frozen snow drift. The evidence of record is that on the initial injury report, the Claimant stated that his injury occurred when he was walking down the track. J. C. Golden, Supervisor Signals, stated that the first report said "he put a shunt down and then he felt this pain and fell to the ground." Golden further testified that upon questioning, the Claimant reported that he had developed back pain in a service station on Monday, February 3, 1997. There is testimony in the record substantiating that date as the time of first injury. The Claimant testified that he was in pain on February 3 and did visit a chiropractor on both February 4 and again on February 5, 1997. The Claimant did not deny that when asked why he waited so long to report the injury he stated he "did not want to go through the red tape" as he had when he was injured on December 13, 1996.

The Board finds ample evidence that the Claimant delayed in promptly reporting the injury. The Claimant's defense that he was told to put down the February 3, 1997 date by the Supervisor Signals was refuted. Testimony by both the Signal Maintainer and the Signal Inspector confirm different scenarios, but both support the Carrier's charges that the Claimant was aware of his injury and failed to timely report it. Accordingly, the Board finds ample evidence to support the Carrier's findings of guilt.

The Board further reviewed the Organization's arguments that the Claimant received disparate treatment by the Carrier's denial of permission to participate in Operation Prevention, thus bypassing an Investigation, and further, that the Carrier was unfair in its discipline. There is evidence that four days before the Investigation, the General Chairman was informed that the Claimant would not be permitted to utilize Operation Prevention. The Board also considered testimony from that the two other employees who utilized Operation Prevention had no prior injury. This is not the case

with the Claimant and further, the Carrier has been shown to violate no Rule in its decision. As for discipline, the Board finds no reason in this instant record to interfere with the Carrier's decision in this matter.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of May, 2000.