

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35032
Docket No. SG-34863
00-3-98-3-563**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and Ohio
(Railroad 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 J. M. Hiller for payment for all time lost (including overtime) as a result of his suspension from service from August 12 to September 16, 1997, account Carrier violated the current Signalmen’s Agreement, particularly Rule 701, when it failed to provide the Claimant with a fair and impartial investigation and disciplined him without meeting its burden of proving the charges in this matter. Carrier’s File No. 15(97-186). General Chairman’s File No. 97-104-PM. BRS File Case No. 10584-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 was suspended from his duties following a company Investigation into a charge of unauthorized use of a company vehicle and conduct unbecoming an employee, or, more specifically, having allegedly been observed while driving a CSX truck to have picked up a female who, it was asserted, was a known prostitute.

It is significant that the person (complainant) who was said to have provided information that gave rise to the charge was not present for examination at the Hearing. In this respect, nothing was presented into the record to establish that the complainant had been asked, but refused, to appear as a witness against the Claimant.

Testimony of a Carrier Special Agent who had been delegated to interview and obtain a written statement from the complainant is also found wanting with respect to facts and information concerning the complaint or incident. The hand-written statement purportedly given to the Special Agent by the complainant is not shown to have been witnessed by another person. Testimony of the Special Agent also reveals that the complainant was not certain of the time and date that she had allegedly made her observations of the driver of the company vehicle, and supports the conclusion that it was only after being prompted that she then guessed at the date of the purported incident. Further, the Special Agent testified that the complainant had previously called the Carrier main switch board to initially report the incident. The Special Agent said that he had requested that there be a check of recordings made by the main switch board. However, no such support was produced to show that such a call had, in fact, been made to the main switch board on or about the date(s) offered by the complainant.

That the complainant gave the Carrier a vehicle identification number that corresponds with the vehicle assigned to the Claimant does not necessarily overcome other glaring defects in the report provided by the complainant. As urged in defense of the Claimant, vehicle numbers on company trucks are very visible, and the Claimant has occasion to use the road in front of the complainant's business, a tattoo parlor, numerous times throughout the course of a day in the performance of his duties. In this same connection, it must be considered that the vehicle that the complainant described as being driven by the Claimant did not necessarily fit the vehicle assigned the Claimant. The complainant said that the vehicle was equipped with white side rails, or, as agreed at the Hearing, something not on the vehicle assigned to the Claimant.

It is also significant, as likewise brought out at the Hearing, that the description of the driver of the company vehicle as provided by the complainant was not shown to be sufficiently accurate for it to be concluded that it was, in fact, the Claimant that she had described in her complaint to the Carrier.

In the light of the above considerations and careful reading of the record in this case, there is no question that the Carrier failed to meet a necessary burden of proof for its charges. The claim as presented will, therefore, be sustained.

AWARD

Claim sustained.

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 25th day of October, 2000.