

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35396
Docket No. SG-36081
01-3-00-3-265

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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.A. Belcher for compensation for all lost time and benefits and to have all reference to this matter removed from his personal record in connection with his suspension from service on May 3, 1999, following two investigations held on April 14, 1999, account Carrier violated the current Signalmen’s Agreement, particularly Rule 701, when it suspended the Claimant without a fair and impartial investigation, and without meeting the burden of proving the charges against him. Carrier’s File No. 15 (99-79), General Chairman’s File No. 99-27-PM. BRS File Case No. 11176-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 hired as an Assistant Signalman on June 23, 1997. At the time of the incidents leading to the instant matter, he was working as a Signalman. On March 5, 1999, Foreman C. J. Sellers instructed the Claimant to pick up a battery. According to Foreman Sellers, the Claimant not only failed to pick up the battery, but also failed to advise him that he had not done so. Foreman Sellers also testified that the Claimant and Signalman J. G. Goff were instructed to graphite all of the 11 switches at Delray interlocker on March 17, 1999. However, three switches were not lubricated, even though the Claimant was sitting in his truck and appeared to be asleep, prior to the end of the shift. In addition, on March 31, 1999, the Claimant was scheduled to be at work at 7:30 A.M., but he failed to appear at the designated location. On March 21, 1999, Foreman Sellers and Signalman Goff wrote a letter to Supervisor M. C. Abner expressing concern over the Claimant's lack of attention to his duties.

The Claimant testified that the battery was not at the designated location on March 5, but he could not explain why it was present shortly thereafter. He claimed that on March 17 he was simply waiting for another employee to complete a repair before he finished graphiting the switches. The Claimant acknowledged that he was not present on March 31, but attempted to leave a message for the Foreman on his cell phone.

At approximately 3:00 P.M. on March 31, 1999, the Claimant was handed a letter by Supervisor M. C. Abner, advising him that he was charged with insubordination and absenting himself from service without permission and that he would be withheld from service pending the outcome of the scheduled Investigation. When the Claimant was given the letter, he became irate and argumentative, used profane language and generally failed to behave in a civil and courteous manner. The Claimant testified that he had acted in this way because he was upset about being removed from service. Pursuant to this behavior, the Claimant was charged by letter dated April 1, 1999 with conduct unbecoming an employee, as well as insubordination.

By letters dated March 31 and April 1, 1999, the Claimant was instructed to attend two Investigations on April 14, 1999. In the letter of March 31, 1999, the Claimant was charged with the failure to follow instructions on March 5 and March 17, 1999 and failure to report for work at the designated time and place on March 31, 1999. The April 1, 1999 letter charged the Claimant with conduct unbecoming an employee,

using boisterous, profane and vulgar language, failure to behave in a civil manner and being insubordinate.

Both Investigations were held on April 14, 1999 in Livonia, Michigan. As a result of the Investigations it was determined that the Claimant was guilty of the alleged Rule violations. In a letter dated May 3, 1999, the Claimant was informed that he was suspended for a period of five days for the first occurrences and 30 days for the second occurrence. According to the record, the Claimant resigned from the service of the Carrier on May 10, 1999.

The Organization claims that the Carrier violated the Agreement when it failed to provide the Claimant with fair and impartial Investigations. Further, the Organization contends that even if it could be found that the Claimant engaged in the charges alleged, the penalty assessed against him was too severe. According to the Organization, the Carrier's decision to suspend the Claimant constitutes an abuse of its discretion in such matters. Finally, the Organization claims that the Carrier failed to properly furnish the Organization with exhibits that were entered into evidence at the Investigations.

Conversely, the Carrier contends that it acted appropriately in all ways. According to the Carrier, both Investigations were fair and impartial. As to the merits, the Carrier alleges that the results of the first Investigation fully support a finding of substantial evidence that the Claimant engaged in the offenses for which he was charged. According to the Carrier, the testimony of the witnesses, including the Claimant, proved conclusively that he had failed to follow instructions on March 5 and 17, as well as not appearing for work on March 31, 1999. Further, evidence developed at the second Investigation establishes that the Claimant's behavior toward his Supervisor on March 31, 1999 was unbecoming an employee and insubordinate. According to the Carrier, there is no question but that the Claimant engaged in the behavior alleged and that the discipline imposed was reasonable.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accord to what we might or might not have done had it been ours to determine, but to pass upon the question whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record

that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325, as well as Third Division Award 21299.)

The Board thoroughly reviewed the transcripts and the positions of both parties. On the question of whether there was substantial evidence that the Claimant violated Carrier Rules when he failed to follow instructions on March 5 and 17, as well as not appearing at work on March 31, 1999, the Board finds substantial evidence to uphold the Carrier's position. Further, there was substantial evidence that the Claimant engaged in conduct unbecoming an employee on March 31, 1999 when he was presented with the letter of charge for the first Investigation. While the Claimant may have been upset at being removed from service, his behavior was clearly inappropriate (See Third Division Award 21299). Thus, the Claimant engaged in the behavior alleged on both counts. The Investigations were appropriate and proved, by substantial evidence, that the Claimant engaged in the acts alleged. The Organization failed to sustain its burden of proof to show that the Claimant was denied a fair and impartial Investigation and its objections are rejected.

Finally, we turn to the penalty imposed. As noted above, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. In this case, the Claimant received two suspensions, one of five days and one of 30 days. We note that the Claimant was a short-term employee at the time of the incidents. It is clear that a five-day suspension for the Claimant's actions on March 5, 17 and 31 for failing to follow instructions and failing to appear at work was reasonable. Further, the 30-day suspension imposed for the Claimant's inappropriate behavior on March 31, 1999 when he was given the letter involving the other allegations was also reasonable. As a matter of fact, Award 21299 mentioned supra upheld the dismissal of an employee under similar circumstances.

After a review of all these considerations, we do not believe that the penalty imposed in these matters was either unjust, unreasonable or arbitrary and did not constitute an abuse of the Carrier's discretion. Accordingly, the instant claim is denied in its entirety.

**Form 1
Page 5**

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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 26th day of April, 2001.