

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35575

Docket No. SG-36295

01-3-00-3-521

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Baltimore and Ohio

(Railroad Company - Chicago Terminal)

STATEMENT OF CLAIM:

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

Claim on behalf of M. Mollison for reinstatement to service with all rights and benefits unimpaired; compensation for all lost time; payment for any expenses related to attending the investigation; and for any reference to this matter to be removed from his personal record. Account Carrier violated the current Signalmen's Agreement, particularly Rule 41, when Carrier issued harsh and excessive discipline against the Claimant. Carrier dismissed him from service following an investigation held on September 1, 1999 without benefit of a fair and impartial investigation and without meeting the burden of proving the charges against him. Carrier's File No. 15 (99-207). General Chairman's File No. CT 10-99. BRS File Case No. 11442-B&OCT.”

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 16, 1997 and thereafter awarded a Signal Foreman position on July 24, 1998. While working in the latter position, he was assigned a Company pickup truck for use in the performance of his duties during the workweek. On August 2, 1999, at approximately 11:30 A.M., the Claimant was observed driving that CSXT truck on Norfolk Southern property, which was approximately 20 miles from his work location on that date. On August 12, 16, and 19, the Claimant was observed driving that CSXT truck for personal use, i.e., back and forth between home and work. On August 19, 1999, the Claimant was questioned by the Illinois State Police about a hit and run accident involving the same CSXT truck on Interstate 94, at approximately 12:45 A.M. on August 13, 1999.

On August 20, 1999, when the Claimant was removed from service pending Investigation for alleged unauthorized use of the CSXT truck that was involved in the hit and run accident, he refused to comply with supervisory instructions to sign a verification of his home address. Subsequently, by letter dated August 23, 1999, the Claimant was instructed to attend a formal Investigation to develop the facts regarding his unauthorized personal use of the truck, his involvement in the hit and run accident, failure to comply with a July 19, 1999 Letter of Instruction to report vehicle damage, refusal to obey the direct order to sign verifying his address, and unauthorized absence from his assignment at approximately 11:30 A.M. on August 2, 1999.

After one postponement requested by BRS General Chairman C. Cleghorn, the Investigation was held on September 1, 1999. Based on that Investigation, the Carrier concluded that the Claimant was guilty of insubordination, unauthorized personal use of a company vehicle, and being absent without permission, for which he was dismissed by letter dated September 13, 1999. The Organization appealed the dismissal on grounds that the Claimant was not afforded a fair and impartial Investigation and that the Carrier failed to prove his culpability of the charges. After careful study of the record, we cannot concur with the Organization's views. There is no indication that the Claimant was denied contractual due process and the evidence of record plainly supports the Carrier's conclusion that he was culpable as charged.

During the Investigation of the charges against him, the Claimant asserted that he did not use the truck for his personal use, but drove it home every night during the week "because he was only five minutes from the job and no one told him he couldn't do that." He initially admitted that no one actually gave him authority to drive the truck home, but later changed his testimony to state he did not recall if any Supervisor gave him permission to use a CSX company vehicle for personal use. Apparently the Carrier did not find his testimony credible and we find nothing probative in this record to contradict that conclusion.

In the late morning of a scheduled work day on August 2, 1999, the Claimant was observed driving the vehicle in question on Norfolk Southern property where his estranged wife is employed, some 20 miles from his work site. The evidence and testimony of all witnesses, including the Claimant, leaves no doubt that he considered the truck to be his personal vehicle, *i.e.*, he used it to transport his babysitter and to go to the Norfolk Southern Yard to "interfere with" his wife. It is worth noting that on the day he was taken out of service, Friday, August 20, 1999, he had to be driven home because his car was not at the signal shop.

Mutually corroborating statements on the record from several co-workers and Supervisors persuasively show that the Claimant drove the truck home after work every day, including Fridays, and drove it to work every day, including Mondays. As for the hit and run accident, the Claimant was seen driving the truck home on August 12, 1999 and the police reports state that the accident occurred at 12:45 A.M. on August 13. Assuming, arguendo, that the Claimant truthfully testified that the accident actually occurred at 12:45 A.M. on August 14, not August 13, the record shows that he drove the truck home on the night of Friday, August 13 and drove it back to work on Monday morning, August 16. Although this evidence may be circumstantial, it clearly supports the logical conclusion that the Claimant was driving that truck when it hit another car on a highway with a 55 m.p.h. speed limit and failed to stop or report the accident. Just because circumstantial evidence requires the drawing of inferences does not necessarily render it suspect. Clearly proven circumstantial evidence can be nearly as persuasive as eyewitness proof, especially when activity in the nature of a conspiracy is involved and no reasonable and believable alternative explanation is presented by an employee to dispel the adverse inferences drawn from the circumstances presented. See, Lone Star Steel Co., 48 LA 950 (J. Jenkins, 1967); Western Airlines, Inc., 66 LA 1165, 1169 (1976) Koppers Co., 76 LA 175 (L. Amis, 1981); A. B. Chance Co., 57 LA 725 (Florey,

1971); Lee C. Moore Co., 84 LA 1166 (Duff, 1985); Cf. City of Detroit, 76 LA 213 (G. Roummel, Jr., 1981).

The evidence is sufficient to support the Carrier's reasonable conclusion that the Claimant was driving the Company truck without authority when it hit another car at high speed, then drove away. It is noted that during his two years and two months as a CSXT employee, the Claimant had received a reprimand on July 13, 1998, for causing damage in excess of \$14,000 to a truck rented from Hertz. Regarding the other charges, the Claimant's name is the first one acknowledging receipt of June 7, 1999 instructions to report any accidents and/or damage to company vehicles. The Claimant was required to report the hit and run accident and any damage to the truck resulting from the collision, but he failed to do so. Nor can there be any doubt that the Claimant was insubordinate on August 20, 1999 when he was instructed to sign the paper with his address on it. Even if the propriety of those instructions may be debatable, the Claimant's responsibility was to follow those instructions and grieve later, because the direct order presented no reasonable apprehension of physical harm. Further, his exclamation that "There was no way I am he was going to sign any f***ing paper" simply exacerbated his insubordination.

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 24th day of July, 2001.