

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36400
Docket No. SG-36990
03-3-01-3-559

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Kansas City Southern Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of R.H. Ware for reinstatement to position of Signal Foreman with compensation for all lost wages and benefits including skill differential and expenses. Carrier should also be required to remove any reference of this matter from his personal record. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when it improperly disqualified the Claimant from his Signal Foreman’s position following an investigation held on September 22, 2000. Carrier’s File No. K0600-5426. General Chairman’s File No. 004047. BRS File Case No. 11759-KCS.”

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.

At the time of the events giving rise to this dispute, the Claimant was a Signal Foreman. On September 11, 2000, he notified the Carrier that he pled guilty on September 8, 2000 to the charge of driving while intoxicated on June 24, 2000. The court suspended his driver's license and sentenced him to community service. This was the Claimant's second DWI conviction.

On September 15, 2000, the Claimant was notified to attend an Investigation in connection with "allegedly having your commercial driver's license suspended in June 2000, and your alleged failure to retain a commercial driver's license, which was a requirement on your position as a Signal Foreman."

The testimony and evidence at the Hearing established that the Claimant lost his driver's license for a period of one year and cannot drive. Following the Investigation, the Carrier disqualified the Claimant from his position. The Organization objects to the action on several grounds. First, the Organization contends that the Claimant was denied a fair and impartial Investigation. Specifically, it is argued that the Claimant's disqualification notice cites a violation of Rule 1.2.7 and Rule 1.6, yet the Claimant was not advised in the Notice of Investigation that he was being charged with a violation of those Rules.

Rule 47, entitled "Discipline/Investigations" provides that an employee must be advised of the precise charges lodged against him. Prior Awards of the Board have firmly established in similar cases that citation to the specific Rule is not always required in order for the Carrier to comply with Rule 47. The test is whether the charges are sufficiently adequate to enable the employee and the Organization to prepare a defense. Third Division Awards 32061 and 26276. That test was met in this case.

The Organization also argues that the Claimant's right to a fair Hearing was prejudiced by the Carrier's failure to accommodate the Organization's request for a list of all CDL drivers in the Signal Department and their DOT driving records. However, no Rule has been cited by the Organization that would provide for the pre-Hearing discovery it now seeks. It was the Organization's responsibility to call witnesses and produce facts to support its affirmative defense.

On the merits, the Organization asserts that the Carrier arbitrarily concluded that the Claimant was unable to fulfill his duties as Signal Foreman when he lost his CDL driver's license. The Carrier, on the other hand, argues that disqualification was

reasonable and proper because the possession of a commercial driver's license is required for his position in accordance with Department of Transportation regulations.

Based on our review of the record, and consistent with numerous Awards which have addressed this subject, we find that the Carrier's action was not an arbitrary or capricious exercise of its discretion. See, Third Division Awards 35336, 34017, 33514 and 32353. As the unrefuted evidence shows, the Carrier uses gang trucks that must be operated by a driver in possession of a CDL license. When the Claimant bid for the position of Signal Foreman, he was expressly informed that a CDL license was required for the position. Because his driver's license was rescinded, he was unable to perform that requirement of the position. The disqualification was reasonable under the circumstances, and therefore the claim must be denied.

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 18th day of February 2003.