

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36734
Docket No. MS-34321
03-3-97-3-810

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Scott E. Smith
PARTIES TO DISPUTE: (
(Metro-North Commuter Railroad

STATEMENT OF CLAIM:

“Excessive disciplinary action and violation of the BRS collective bargaining agreement by Metro-North Commuter Railroad in that the employee, Scott E. Smith’s rights were violated by different departments of the Metro-North Commuter Railroad and also the fact that the employee did not receive a fair and impartial hearing.

The remedy sought is the removal of the disciplinary action and expungement of the events from the employee’s record or that the action be reduced to a MOST Report by the company in lieu of disciplinary action.”

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.

In order to gain entrance to the second floor of the tower at CP-1 and 56th Street and Park Avenue in New York City, on July 1, 1996, the Claimant climbed the outside wall of the tower and broke a window on the second floor. The Claimant then cut his arm while reaching into the window. For that conduct, the Claimant received a 30-day deferred suspension.

Substantial evidence supports the Carrier's decision to impose discipline. Rule citation is not necessary for the Board to conclude that even in the performance of their duties, employees are not to gain entrance to a locked area in the manner the Claimant did in this case.

However, under the circumstances, we find that the amount of discipline imposed was excessive and therefore arbitrary. The Claimant's 30-day deferred suspension shall be reduced to a MOST Report and reference to the 30-day deferred suspension shall be removed from the Claimant's record.

The parties' procedural arguments do not change the result.

AWARD

Claim sustained in accordance with the Findings.

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 22nd day of October 2003.