

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36944
Docket No. SG-36787
04-3-01-3-328**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (NRPC-S):

Claim on behalf of C. Kowalko for reinstatement to service with seniority unimpaired, compensation for all lost time and benefits, and for any reference to this matter removed from this personal record. Account Carrier violated the current Signalmen's Agreement, particularly Rule 48, when it dismissed the Claimant from service without benefit of a fair and impartial trial and without meeting the burden of proving the charges against him. Carrier compounded the violation by issuing harsh and excessive discipline against the Claimant in connection with a trial held on May 15, 2000. Carrier's File No. NEC-BRS(S)-SD-877D. General Chairman's File No. JY 321026-18800. BRS File Case No. 11563-NRPC-S."

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 a Signalman with 30 months of service at the time of his dismissal for excessive absenteeism in May 2000. An Investigation was conducted on May 15, 2000 on charges that the Claimant violated the Carrier's National Attendance Policy by having three occurrences of absence and/or lateness within a 30-day period and five occurrences within a 90-day period. The charges were based upon the Claimant's alleged absences on February 15, March 2, and April 11, 2000 and his lateness on March 22 and April 13, 2000. On May 23, 2000 the Hearing Officer found that the charges had been proven and on May 25, 2000 the Carrier imposed the discipline of dismissal as the next step of the progressive disciplinary procedure outline in the National Attendance Policy, because the Claimant had already received two ten-day and one 30-day suspension, and was on a waiver issued on August 16, 1999 advising him of a final warning and indicating that another violation within a one-year period would result in immediate dismissal.

At the Hearing, the Carrier introduced into evidence the testimony of the Claimant's Foreman, Assistant Supervisor and Supervisor, as well as attendance log books and payroll records in support of the facts of the Claimant's cited absences and lateness. The Claimant did not take issue with the fact that he was absent on February 15, March 2 and April 11, 2000, but did contend that he was not one and one-half hours late on March 22, but rather, was absent that day, proffering a doctor's note indicating that he was seen on that date and could return to work the following day, and contested the claim that he was late on April 13, 2000. Two of the Carrier's Supervisors, and its records, indicate that the Claimant was one and one-half hours late on March 22 and received eight and one-half hours pay for that date, specifically recalling that his Foreman was called to come and pick him up and take him to the job site. As to the April 13 lateness, the Claimant was recorded as being ten minutes late by the Assistant Supervisor, who testified that he picked up

the attendance log at 6:00 A.M. and placed it in the office, and that the Claimant arrived at 6:10 A.M. according to the clock used by employees to start and end their work tours, which he checks against his computer clock fairly frequently. His Foreman recalled receiving a call from the Claimant that date indicating that he was on his way but going to be late.

The Claimant expressed his belief that he was being targeted and harassed by his Supervisor, who everyone was afraid of, and that these records were part of an effort to get rid of him and could not be relied upon as being accurate. He related conversations with both his Foreman and Supervisor on March 21 and 22 about being in abdominal pain and needing to see his doctor, their concern over whether he intended to file an injury claim, his assurance that he would not, being told that his absence was being recorded in the computer, and understanding that it had been excused.

The Carrier argues that there is substantial evidence in the record to support the charge that the Claimant was absent or late on three occasions within 30 days and five occasions within 90 days, in violation of its National Attendance Policy, and that his dismissal was in compliance with the progressive disciplinary procedure set out in that policy. It notes that for a short term employee, the Claimant was excessively absent and was on a final waiver at the time of these occurrences. The Carrier avers that it does not help the Claimant to show that he was absent rather than late on March 22, because either would constitute an occurrence under the policy and the evidence reveals that he accepted pay for that date. The Carrier asserts that the Organization failed to establish that any late arrival, no matter how trivial, results in an employee being docked ten minutes, because the Foreman knew of no such policy and stated that it never happened on his gang. It requests that the Board uphold the Hearing Officer's finding of guilt of the charges, which are supported on the record, and deny the claim, citing Public Law Board No. 3705, Award 2; Special Board of Adjustment No. 986, Award 150; Third Division Awards 27613, 22838; Second Division Awards 11694, 8782.

The Organization contends that the Carrier failed to sustain either the charge that the Claimant was late on March 22 or April 13, 2000, requiring that the discipline be overturned because there is no valid proof of his having three occurrences within 30 days or five occurrences within 90 days. It takes issue with

the accuracy of the Carrier's record-keeping, relying upon the Claimant's testimony and his doctor's note indicating that he was seen by the doctor on March 22 and was not released to return to work until March 23, and the evidence that being docked ten minutes pay does not necessarily prove that an employee was ten minutes late, because the supervisor admittedly docks employees present who do not have their Safety Books with them. The Organization argues that the Claimant's March 22 absence was excused and should not have been counted against him. It also asserts that the Carrier's evidence of the accuracy of its timekeeping on April 13 fell short of establishing the Claimant's lateness on that date. The Organization contends that the Carrier did not meet its burden of proving a violation of the National Attendance Policy, as alleged, that the claim must be sustained and the Claimant returned to work, relying upon Third Division Awards 33385, 20766, 19642, 19357, 19037; Second Division Awards 11626, 7603.

A careful review of the record convinces the Board that there is substantial evidence in the Investigation to support the Hearing Officer's conclusion that the Claimant was late on both March 22 and April 13, 2000, and that each date was an occurrence which could be relied upon by the Carrier under its National Attendance Policy. In discrediting the Claimant's denial that he was late on April 13, 2000, the Hearing Officer relied upon the testimony of both Claimant's Foreman and his Assistant Supervisor, and the attendance log and payroll records generated by the Carrier. Similarly, the Hearing Officer's finding that the fact that the Claimant proffered a doctor's note dated March 22, 2000 indicating that he was seen on that date does not prove what time of day this occurred, and does not support a finding that he was absent rather than late in light of the contrary testimony of three witnesses, two of which recalled being involved in attempts to have the Claimant picked up and taken to the job site when he arrived, and the fact that Claimant was paid for eight and one-half hours for work on March 22, 2000. We conclude that there is substantial evidence to support the Claimant's guilt of the charges and that, based upon the Claimant's stage in the progressive discipline procedure in May 2000, his dismissal was appropriate. Accordingly, the claim must be denied.

AWARD

Claim denied.

Form 1
Page 5

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Docket No. SG-36787
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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 22nd day of March 2004.