

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37058
Docket No. SG-37467
04-3-02-3-532

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

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

STATEMENT OF CLAIM:

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

Claim on behalf of C. S. Cooper, for reinstatement to service with his seniority unimpaired, payment for all time and benefits lost including overtime, and his personal record cleared of any reference to this matter, account Carrier violated the current Signalmen's Agreement, particularly Rule 47, when it imposed harsh and excessive discipline against him without meeting the burden of proving the charges, in connection with an investigation held on April 12, 2001. Carrier's File No. K06015514. General Chairman's File No. 01-068-KCS-185. BRS File Case No. 12059-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.

The Claimant was formerly employed by the Carrier as an Assistant Signalman from August 1999 until June 14, 2001. Contrary to the Statement of Claim, the Investigation was held on June 7, 2001, on the charge that the Claimant failed to comply with an order to appear for a fit-for-duty examination. Following the Investigation, the Claimant was dismissed from the Carrier's service.

On the same date, a Hearing was held in connection with other charges leveled against the Claimant. Following the Hearing in that matter, the Claimant was discharged. In Third Division Award 37057, the Board upheld the Carrier's dismissal of the Claimant. Thus, in the absence of compelling evidence to the contrary, the Board finds the present claim to be moot.

AWARD

Claim dismissed.

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 June 2004.