

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37059
Docket No. SG-37595
04-3-02-3-717

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
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of D. L. Bennett, for reinstatement to service with his seniority rights and benefits restored due to his removal from service following an investigation held on June 20, 2001, account Carrier violated the current Signalmen’s Agreement, particularly Rule 701, when it imposed the harsh and excessive discipline of dismissal against the Claimant. Carrier’s File No. 15-02-0013. General Chairman’s File No. 01-48-PM. BRS File Case No. 12453-C&O(PM).”

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 a Signaller until his dismissal on July 5, 2001. The Claimant had been in the Carrier's Employee Assistance Program (EAP) beginning in January 2001; during this time, the Claimant was not performing service for the Carrier. On April 26, 2001 the Claimant was released by the EAP to return to work as of May 3, 2001. The Claimant did not report for his assignment that day or thereafter. Following proper notice, an Investigation was conducted on June 20, 2001. During the initial Investigation which was conducted on June 5, 2001, the Claimant's absence was not explained. However, due to an inability to transcribe the proceedings, the parties agreed to reconvene the Investigation. The Claimant did not attend the Investigation, apparently due to his incarceration as of that date, lasting until October 2001. The Claimant was in an alcohol rehabilitation center from October 2001 until January 2002.

Neither the Organization nor the Claimant dispute that the Claimant violated CSXT Operating Rule 500, which states:

"Employees must report for duty at the designated time and place. Without permission from their immediate supervisor employees must not:

1. Absent themselves from duty, or
2. Arrange for a substitute to perform their duties.

Employees subject to call for duty must be at their usual calling places or furnish information as to where they may be located. When they wish to be absent or if they are unable to perform service, employees must notify the proper authority. They must not wait until a call for duty is received to request permission to be marked off. . . ."

The Claimant did not report for duty at the designated time and place. He did not have permission for his absence; nor did he notify the proper authority. Rather, the Organization believes that the Carrier violated Rule 701 of the Agreement of September 1, 1982 between the Carrier and the Organization, entitled "Discipline - Unjust Treatment." Rule 701 requires a "fair and impartial hearing." The Organization presented no evidence that the Carrier failed to follow any of the procedures of Rule 701, but rather asserts that inherent therein is the principle that discipline must be taken in a progressive manner and must not be harsh or excessive.

The Organization directed the Board's attention to several Awards supporting its assertion. See Second Division Awards 7836, 8157; Third Division Awards 19037 and 19537. These Awards stand for the proposition that discipline should be corrective and progressive, not punitive. However, the Organization pointed to no Awards demonstrating that consistent absences without notice to a carrier do not warrant discharge. Termination in the face of job abandonment is neither arbitrary, unreasonable nor discriminatory. Effectively, the Organization would have the Board substitute its judgment for the Carrier's and grant leniency based on sympathy. Such is not within the authority of the Board. See First Division Award 23852; Second Division Awards 6615, 7267, 7589, 12573, 13161; Third Division Awards 22224, 22963, 25664, 31937 and Public Law Board No. 2096, Award 11.

Although the Board commends the Claimant's efforts in treating his disease, based on the foregoing, we have no alternative but to deny the claim.

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 22nd day of June 2004.