

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37196
Docket No. SG-37241
04-3-02-3-229**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Canadian National/Illinois Central Railroad

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad (IC):

Claim on behalf of S. H. Kahn for payment of all lost time and benefits, with all reference to the discipline imposed in connection with an investigation conducted on April 10, 2001, removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 35, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline without meeting the burden of proving the charges against the Claimant. Carrier’s File No. IC-135-01-07. General Chairman’s File No. IC-0011-01. BRS File Case No. 11875-IC.”

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.

On April 3, 2001, the Claimant was notified to attend a formal Investigation to "determine whether or not [he] failed to promptly report an alleged on-duty personal injury that occurred prior to January 26, 2001, when [he] obtained medical treatment. This office was first notified of this matter on April 3, 2001." The Investigation was conducted on April 10, 2001. As a result of the Investigation, the Claimant was found guilty of the charge, and by letter dated April 20, 2001, the Carrier notified the Claimant that he was being assessed an eight-day suspension. The Organization thereafter filed a claim on the Claimant's behalf challenging the Carrier's decision to suspend the Claimant. The Carrier denied the claim.

The Carrier initially contends that there is ample evidence to support the charge that the Claimant failed to report his alleged on-duty injury. The Carrier maintains that numerous tribunals have upheld a carrier's right to dismiss an employee for failing to properly report a personal injury. The Carrier emphasizes that despite the Organization's attempt to shift blame from the Claimant, the testimony from the Investigation clearly shows that the Claimant did not report his injury in accordance with the appropriate Rules.

The Carrier argues that the discipline at issue was warranted. The Claimant testified that he did not report the personal injury when it occurred. The Claimant was responsible for submitting a report, and that responsibility was not relinquished because the Claimant did not realize the extent of his injuries. The Carrier points out that it is imperative that employees make the Carrier aware of injuries, or even suspected injuries, as soon as possible. Employees therefore must be truthful in reporting injuries. The Carrier maintains that dismissal has been held to be warranted for the falsification of an injury report. The Carrier emphasizes that the Claimant committed a serious violation of the Rules when he did not file a personal injury report, and the discipline imposed was warranted.

The Carrier then asserts that the Claimant received a fair and impartial Hearing. The Carrier contends that the Organization did not submit any evidence

to support its argument that the Hearing was not fair and impartial. The Carrier points out that there is no evidence of misconduct by the Hearing Officer, or of prejudicial misconduct. The Carrier maintains that the Organization's statements are not relevant to the issue of whether the Claimant received a fair and impartial Investigation. The Carrier argues that the record demonstrates that the Hearing was fair and impartial.

The Organization contends that the Carrier violated the parties' Agreement, particularly Rule 35, when it failed to provide the Claimant with a fair and impartial Investigation, issuing harsh and excessive discipline without meeting its burden of proof. The Organization maintains that the Carrier failed to show any evidence of substantial value that the Claimant was guilty. The Carrier failed to meet its burden of proof, and it based its decision to discipline the Claimant on testimony that was not clear and was totally uncorroborated. The Organization emphasizes that the Carrier was obligated to establish its case and prove through substantial evidence that the Claimant violated its Rules, but the Carrier failed to meet its burden.

The Organization then argues that contrary to the Carrier's assertion, the record shows that the Claimant notified his Foreman about his injury. The Claimant testified that he did, in fact, report the incident to his supervisor. The Organization points to the Carrier's attempt to establish that the Claimant did not report his injury to the proper authority, and the Organization maintains that the Rules do not specify who the proper authority is. The Organization asserts that the Claimant believed his Foreman to be the proper authority, and the Claimant reported the injury to his Foreman as soon as he could. The Organization asserts that the testimony of the Claimant and the witnesses clearly show that the Carrier had knowledge of, or certainly should have had knowledge of, the injury on Monday, January 29, 2001.

The Organization further asserts that this type of situation is not uncommon. Signalmen often experience such things as strains and bruises, and the pain subsides with time. In the Claimant's case, the pain did not subside, and he sought medical attention and reported the incident to his Foreman. Moreover, the Claimant expected that his Foreman would give him guidance about what to do. The

Organization argues that the Carrier does not have an adequate reporting policy for its employees to follow in cases such as this.

The Organization maintains that the Carrier's decision to discipline the Claimant under the circumstances at issue was harsh and excessive. Moreover, this discipline was not representative of correcting or guiding the Claimant's conduct. Instead, the Carrier's sole intent was to punish the Claimant, and the Organization contends that it is an abuse of the Carrier's discretion when discipline is imposed only to punish an employee, rather than to correct or guide the employee's conduct. The Organization asserts that the Carrier abused its managerial discretion with the arbitrary decision to issue the harsh and excessive discipline to the Claimant.

The Board reviewed the procedural arguments raised by the Organization, and finds them to be without merit.

The Board reviewed the evidence and testimony in this case and finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to abide by the Rule to promptly report his on-duty personal injury. The Claimant admitted that he did not report the injury when it actually occurred.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant received an eight working-day suspension for his wrongdoing in this case. Given the fact that the Claimant has worked for the Carrier for just one year, as well as the seriousness of the Rule violation, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the Claimant the eight-day suspension. Therefore, the claim will be denied.

AWARD

Claim denied.

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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 28th day of September 2004.