

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37243
Docket No. SG-37237
04-3-02-3-192**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 compensation for all lost time and benefits and that the discipline be removed from the Claimant's personal record. Account Carrier violated the current Signalmen's Agreement, particularly Rule 35, when Carrier issued harsh and excessive discipline against the Claimant in the form of a suspension. Carrier failed to provide the Claimant with a fair and impartial investigation and failed to meet the burden of proving the charges against him in connection with an investigation held on April 27, 2001. Carrier's File No. IC-135-01-04. General Chairman's File No. IC-005-01. BRS File Case No. 11818-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 4, 2001, the Claimant was notified to attend a formal Investigation to "determine whether or not you improperly made use of the Railroad's credit when you obtained lodging at the Baymont Inn on the evenings between January 15, 2001, and January 17, 2001, January 22, 2001 and January 24, 2001, January 29, 2001 and January 31, 2001, February 5, 2001 to February 7, 2001, February 25, 2001 to February 28, 2001 and April 1, 2001 to April 3, 2001, including a long distance personal phone call." The Investigation was conducted on April 10 and April 27, 2001. As a result of the Investigation, the Claimant was found guilty of the charge, and by letter dated May 7, 2001, the Carrier notified the Claimant that he was being issued a 16-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 no doubt that the Claimant was guilty of violating Rule R of the Maintenance of Way Rules. The Carrier emphasizes that the address that the Claimant had on file was within 30 miles of the Baymont Inn, which is the designated headquarters point. During the Investigation, the Claimant stated that the address that the Carrier had on file was not correct, and he had not changed it because he did not have time. The Carrier emphasizes that employees are instructed to notify the Carrier when their address changes.

As for the Organization's assertion that the Carrier failed to provide the Claimant with a fair and impartial Investigation, the Carrier emphasizes that a review of the Hearing transcript demonstrates that this is not true. There is no support for the Organization's argument that the Hearing was not fair and impartial because of the Carrier's "flip-flop" policy. The Organization has not provided any evidence of misconduct by the Hearing Officer, let alone prejudicial misconduct. The Carrier maintains that the Hearing was fair and impartial, and the Organization has not provided any evidence to prove otherwise.

The issue is whether the Claimant had been misusing the Carrier's credit, and this clearly was proven in the Investigation. The Carrier argues that by making this accusation, the Organization is attempting to shift the focus away from the fact that the Claimant is responsible for notifying the Carrier of any changes that occur in his permanent residence. The Carrier maintains that the Claimant is guilty as charged, and the discipline should stand.

The Carrier then asserts that the discipline imposed in this case was reasonable. It is well documented that the Claimant has not been completely honest with the Carrier, and the discipline assessed is a result of his failure to be truthful with the Carrier about his residence. The Claimant was aware that in the five months that he stated he resided in Hoffman Estates, he was responsible for notifying the Carrier. The Carrier maintains that there is no doubt that the Claimant is guilty as charged, and the discipline was warranted.

The Carrier contends that the Claimant received a fair and impartial Investigation, the Claimant did, in fact, violate the Rules, and the discipline was warranted. The Carrier argues that it was proper to include the Claimant's past record, in that it served as a way to measure how much discipline should be assessed once it was proven that the Claimant had violated the Rules. The Carrier asserts that in light of the Claimant's repeated problem with adhering to the Carrier's policies and Rules, he was properly disciplined. The Carrier argues that the claim should be denied in its entirety.

The Organization initially contends that the Carrier violated the Agreement between the parties, particularly Rule 35, when it failed to prove the charges against the Claimant, yet imposed discipline in the form of a 16-day suspension. The charge against the Claimant, for using his Carrier-issued credit card for lodging, is completely without merit. Rule 11(h) clearly states that the Baymont Inn was the Claimant's headquarters during this period, and it further states that the Claimant is entitled to lodging if he is more than 30 miles from his residence. The Organization argues that the evidence demonstrates that the Claimant fully met that criterion, and he never should have been found guilty of any charge in this case.

The Organization points out that even after the Carrier's own Investigation proved that the Claimant's residence was indeed more than 30 miles from the

Baymont Inn, thereby proving the Claimant's innocence, the Carrier nevertheless failed to quash this Investigation as it promised. Instead, the Carrier found the Claimant guilty and assessed him a 16-day suspension.

The Organization argues that the Carrier failed to meet its burden of proof, but instead based its decision to punish the Claimant on the lack of any evidence at all. The Carrier was obligated to establish its case and prove with substantial evidence that the Claimant violated its Rules. The Organization maintains that there is no basis for concluding that the Claimant committed a punishable offense in this situation. The Organization asserts that it was arbitrary and unreasonable for the Carrier to find the Claimant guilty, and this clearly indicates that it deprived the Claimant of a fair and impartial Hearing. The Organization asserts that the Carrier violated the Claimant's rights under Rule 35, and this cannot be allowed to stand. The Carrier did not prove that the Claimant was guilty of any misconduct.

The Organization emphasizes that the penalty imposed against the Claimant makes it evident that the Carrier's sole intent was to punish the Claimant, rather than guide him in the performance of his work. The Organization argues that this constitutes an abuse of the Carrier's discretion. The Organization asserts that no discipline should have been issued in this case at all, because the Claimant did not commit any violations. The Organization ultimately contends that the instant claim should be sustained in its entirety.

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

The Board reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier Rule R when he improperly made use of the railroad's credit by obtaining lodging at the Baymont Inn on various nights in January, February, and April 2001.

The record clearly shows that the Claimant's home address was within 30 miles of the Baymont Inn, which was the designated headquarters point at issue. Rule 11(h) states:

“Except for the division signal gangs on the Chicago Terminal Division signal gangs and signal gang members whose residence are within 30 miles of their headquarters, division signal gangs will throughout their workweek (beginning with the night before their assigned workweek) be lodged in hotels, motels, or other similar facilities designated by the company and will be paid actual necessary expenses for meals consumed on each day which the gang employee renders compensated service. Lodging facilities shall be arranged and paid for by the company and shall be suitable, clean, healthful and sanitary with not more than two gang members occupying one twin-bedded room. Employees who reside within thirty miles of their headquarters who are unable to return home because of snow storms, ice storms, or flood, will be entitled to the benefits of this paragraph.”

The record reveals that there were no emergency weather problems that would allow the Claimant to stay in the hotel. Moreover, all of the evidence shows that the Claimant’s listed address in Glendale Heights was no less than 30 miles from the Baymont Inn - the headquarters point.

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.

Given the seriousness of the offense in this case, which involves obtaining funds from the Carrier and misusing the Carrier’s credit, the Board cannot find that the issuance of a 16-day suspension to the Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

Claim denied.

Form 1
Page 6

Award No. 37243
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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 27th day of October 2004.