

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37305  
Docket No. SG-37565  
04-3-02-3-670

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc. (former Baltimore & Ohio  
( Railroad Company)

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 C. E. Urie, Jr., for compensation for all lost wages and benefits, his seniority unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rules 50, 51, 52 and 53, when it assessed the harsh and excessive discipline of a 10 day suspension against the Claimant as a result of an investigation on November 9, 2001, without meeting the burden of proving the charges. Carrier's File No. 15(01-0216). General Chairman's File No. CEU-Inv.. BRS File Case No. 12200-B&O.”

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 Monday, October 1, 2001, the Claimant was working his regular assignment as a Signaller. He was responsible for his personal safety while performing his work. Part of his work assignment for the day included using a chainsaw to cut and remove trees and brush that was interfering with the signal pole line. Before beginning work, the Claimant engaged in a safety briefing that included a discussion regarding the rough terrain involved, the tools needed for cutting brush, and the safety equipment needed. Although the Claimant had not previously used a chainsaw as part of his job, he did have a discussion with the Lead Signaller regarding the proper operation of a chainsaw. The Claimant elected to not wear the protective leg chaps that were offered to him by the Lead Signaller.

At approximately 3:30 P.M., the Claimant sustained a laceration to his left knee when he lost control of his chainsaw while clearing brush. The Claimant immediately received medical attention that included eight stitches to close the wound. He was off of work for three weeks as a result of his on-duty injury.

By letter dated October 29, 2001, the Claimant was directed to attend an Investigation to be held on November 6, 2001, "... to determine the facts in connection with your operating a chainsaw without protective leg chaps on October 1, 2001. You are charged with violation of CSX Operating Rule 501 and Safety Rules 1C, 1E and E/M 16F."

The Investigation was held on November 9, 2001. In a letter dated November 26, 2001, the Carrier notified the Claimant that as a result of the Investigation, it was determined that the Claimant was guilty as charged and would be assessed a 10-day suspension.

By letter dated December 20, 2001, the Organization appealed the Carrier's decision to suspend the Claimant, contending that the Carrier failed to meet its burden of proof and that the discipline assessed was unwarranted and excessive. The Organization contended that the discipline assessed was disproportionate to the penalty assessed to other employees for the same type of incident. The Organization asked that the Carrier reconsider its decision.

On April 12, 2002, the Claimant signed a "Settlement And Final Release Of All Claims" with the Carrier, indicating that he acknowledged:

"... the receipt of ... from CSX Transportation, Inc. in full settlement and satisfaction of all claims, suits, costs, debts, demands, actions and causes of action hereinafter mentioned, and in consideration of said payment hereby RELEASES and forever discharges CSX TRANSPORTATION, INC., ... from all claims, suits, costs, debts, demands, actions and causes of action which the undersigned has or might have against them or any of them for any and all injuries ... in any way connected with personal injuries received ... on or about October 1, 2001.

\* \* \*

The words 'injuries and/or damages,' where used in this SETTLEMENT AND FINAL RELEASE, include all injuries and/or damages and all consequences of such injuries which may hereafter develop as well as consequences now developed."

The Organization claims that the discipline was unwarranted. It asserts that the burden of proof in a discipline matter such as this is on the Carrier and that burden has not been met. The Organization contends that the Carrier imposed harsh and excessive discipline against the Claimant. According to the Organization, the Carrier's decision to discipline the Claimant constitutes an abuse of its discretion and the Carrier should now be required to compensate the Claimant for all lost time and benefits, with all reference to the discipline and Investigation to be removed from his personal record.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Investigation in accordance with the requirements of the Agreement. The Carrier considers the Claimant guilty as charged. According to the Carrier, the Claimant's own admissions during the Investigation demonstrate sufficient evidence to support the Claimant's culpability for the charge. The Carrier contends that it met its burden of proof and that the discipline was appropriate based on the nature of the offense. In addition, the Carrier contends that the Claimant executed a full release providing that all claims whatsoever relating to the incident of October 1, 2001 were resolved. The Carrier contends that the instant claim is subsumed within the release.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accordance with what we might or might not have done had it been ours to determine, but to pass upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325, Third Division Award 16166.)

After a review of the evidence, the Board finds that we need not reach the question of whether there was substantial evidence in the record to uphold the Carrier's position. We note that the language of the "Settlement And Final Release Of All Claims" covers all matters related to the incident of October 1, 2001 in which the Claimant injured himself while using a chainsaw without the protection of leg chaps. The instant suspension certainly arises out of that incident. Therefore, there is no need to look beyond the language of the settlement. Based on that language, the claim must be dismissed.

**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 21st day of December 2004.