

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37330
Docket No. SG-37714
05-3-03-3-57

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 and
(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 G. H. Jones, for the removal of the five day overhead suspension assessed on January 16, 2002, against the Claimant, account Carrier violated the current Signalmen's Agreement, particularly Rules 50, 51 and 52, when it imposed the excessive discipline of a five day overhead suspension for six months against the Claimant as a result of an investigation held on November 19, 2001, without meeting the burden of proving the charges. Carrier's File No. 15(02-0053). General Chairman's File No. G JONES-INSV. BRS File Case No. 12404-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.

During the months of February and March 2001, the Claimant was assigned to the position of Lead Signalman on Force 7X15. He was required to maintain a Commercial Driver's License (CDL) in order to operate various highway vehicles used by the Signal Department. The Pennsylvania Department of Transportation had suspended the Claimant's license by notices mailed on January 12 and February 23 for the period of February 2 through March 26, 2001. During this period of the suspension of his CDL, the Claimant continued his regular work assignment without informing any superior at CSXT of his CDL license suspension and continued to receive the straight time arbitrary payment of \$19.93 for those workdays that required him to operate a company vehicle. These dates were February 20, 21, 22, 26, 27, 28, March 1, 5, 6 and 7, 2001.

By letter dated July 31, the Carrier directed the Claimant to attend an Investigation to be held on August 9 "... to develop the facts and place responsibility, if any in connection with operating a CSXT vehicle from February 23, 2001 to March 26, 2001 without the proper license. In addition violation of CMV (Commercial Motor Vehicle) and CSXT policy."

The Investigation was ultimately held on November 19, 2001. In a letter dated January 16, 2002, the Carrier notified the Claimant that the charges had been sustained against him and that he was issued a five-day overhead suspension for a period of six months.

By letter dated March 12, 2002, the Organization appealed the Carrier's decision to suspend the Claimant. 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 the Carrier's 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 the Claimant was afforded a fair and impartial Investigation in accordance with the requirements of the Signalmen's Agreement. The Carrier considers the Claimant guilty as charged. According to the Carrier, the evidence adduced during the Investigation demonstrates sufficient grounds

to support the Claimant's culpability. The Carrier contends that the discipline was appropriate based on the nature of the offense.

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 accord 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 its discretion. See Second Division Award 7325 and Third Division Award 16166.

After a review of the evidence, the Board finds substantial evidence in the record to uphold the Carrier's position. The Claimant admitted that he did not possess his CDL for the relevant time period in February and March 2001 and that he did not report such deficiency to the Carrier. Based on the record, the Board concludes that the five-day overhead suspension for a period of six months is an appropriate penalty. Therefore, the claim is without merit.

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 19th day of January 2005.