

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37370
Docket No. SG-37418
05-3-02-3-471

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
(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 D. W. Criss, for payment of any lost time and his seniority and benefits unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 50, 51 and 52, when it failed to conduct a fair and impartial investigation on July 19, 2001, and then issued harsh and excessive discipline to the Claimant without meeting its burden of proving the charges. Carrier’s File No. 15(01-0149). General Chairman’s File No. Inv-Criss. BRS File Case No. 12122-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.

By letter dated July 10, 2001, the Claimant was directed to appear for a formal Investigation on charges that he violated the Carrier's Safety Rules and recommended work practices that specify that employees should back into parking spaces whenever possible, which resulted in a vehicle accident on June 28, 2001. The Investigation was conducted, as scheduled, on July 19, 2001. As a result of the Investigation, the Claimant was found guilty as charged and assessed a one-year disqualification from all Lead Signaller/Foreman positions. The Organization filed the instant claim on behalf of the Claimant, contending that the assessed discipline was harsh and excessive.

The Carrier initially contends that the transcript demonstrates that all of the Claimant's Agreement due process rights were fully protected, and the Hearing was conducted in a fair and impartial manner. The Claimant was given proper notice of the Hearing, sufficient time to prepare a defense, the opportunity to produce and examine evidence, and the opportunity to present and cross-examine witnesses. The Claimant was not misled by the charges against him, and his representative was present and fully prepared to handle the Claimant's defense. The Carrier maintains that there is no merit to the Organization's assertion that a serious prejudicial error occurred when the Hearing Officer restricted the Organization representative from entering evidence that was neither pertinent nor directly related to the vehicle accident at issue.

The Carrier argues that it sustained its burden of producing substantial evidence of the Claimant's guilt. According to the Claimant's own testimony, he was guilty as charged. The Carrier then emphasizes that the assessed discipline is fully justified. There is no dispute that the Claimant caused the parking lot accident by not having a clear field of view while moving a Carrier vehicle in reverse because he had not backed the Carrier truck into the parking space. The Carrier points out that the Claimant knew that he violated Carrier policy with regard to the way in which he parked the Carrier truck on June 28, 2001. Moreover, the Claimant was involved in another "back up" accident with a Carrier vehicle in the previous year. In light of these facts, the Carrier was more than lenient in assessing only a one-year disqualification. The Carrier argues that the Organization failed to offer any support for its assertion that the Claimant's disqualification was not warranted. The Carrier asserts that the Claimant was an employee who obviously knew better,

and the discipline assessed for the Claimant's lack of responsibility is less severe than in other cases involving such vehicle accidents.

The Organization initially contends that the Carrier violated the Agreement by failing to provide the Claimant with a fair and impartial Investigation when it refused to allow evidence presented by the Organization to be entered into the record. The Carrier further violated the Agreement when it issued harsh and excessive discipline as a result of that Investigation.

The Organization acknowledges that there is no dispute that the accident occurred at a convenience store and that the Claimant did not back into the parking space. It maintains, however, that the Claimant drove forward into the parking space only because store management had told him, on the previous day, that it did not permit backing into parking spaces. The Organization points out that the cited Rule specifies that employees should back into parking spaces "whenever possible," and it obviously was not possible to do so in the situation at issue, per the store's instructions.

The Organization argues that the real crux of the matter is whether the Claimant caused the June 28 accident. The Organization emphasizes the Claimant's testimony that when he came out of the store, a vehicle with tinted windows was parked next to his vehicle, and that he walked around his vehicle to assure nothing was behind it before getting into the truck. The Claimant's truck was just barely moving when it was struck by a vehicle moving in the parking lot. The other driver apparently was not looking where he was going, may have been speeding, and hit the Claimant's truck. The Organization asserts that the fact that the Claimant's truck was hit by another vehicle as he was backing out of a parking space does not prove that the Claimant was responsible for the accident or that he was operating his vehicle in an unsafe manner. The Organization asserts that the Carrier's finding of guilt is based upon speculation and conjecture, and there is a complete lack of evidence to support the charges. The Carrier therefore failed to meet its burden of proof.

The Organization asserts that the discipline at issue, which was not based on the evidentiary record, cannot be allowed to stand. The fact that the Claimant was involved in an accident is not proof that he was, in any way, at fault, and therefore subject to discipline. The Carrier based the instant discipline on the mere fact that the accident occurred. As the Board has held on numerous occasions, however, an

employee cannot be disciplined simply for being involved in an accident. The Organization contends that the Carrier failed to meet its burden of proving more than the fact that the Claimant was involved in an accident. The Organization maintains that disqualifying the Claimant from his Signal Foreman's position, and from all Lead Signalman positions, for one year because of his involvement in a very minor accident has nothing to do with the Claimant's qualifications for a Foreman and/or Lead Signalman position, but everything to do with the Carrier's punishing the Claimant for not backing into a parking space.

The Organization goes on to maintain that the Carrier's admission that it did not allow the Organization's evidence into the record in this matter demonstrates that the Hearing was not fair and impartial. The Organization's evidence shows that other Carrier employees, including Carrier supervisors, violate the backing-in Rule, yet have not been disciplined. The Organization asserts that the Carrier violated the Claimant's rights by imposing harsh and excessive discipline in this case. The Carrier's sole intent was to punish the Claimant, not to guide him in the performance of his work, suggesting that the Carrier singled out the Claimant for punishment. The Board repeatedly has held that it is an abuse of the Carrier's discretion when discipline is imposed only to punish the employee, and not to correct or guide an employee's conduct. The Carrier abused its managerial discretion in this case, and it is clear that the penalty at issue was arbitrary, capricious, unwarranted, and certainly does not fit the charge.

The Organization then points to the Carrier's "Root Cause Analysis Report" and "Corrective Action," which specifies that the Claimant would not be eligible to receive the safety bonus for the second quarter or any safety incentive monies available for the first half of 2001. The Organization argues that this demonstrates that even if the Claimant was found guilty of any wrongdoing, which he was not, the Carrier already took corrective action, as outlined in this report, and the one-year disqualification was nothing more than unwarranted punishment.

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

The Board then reviewed the evidence and testimony in this case. We find sufficient evidence in the record to support the conclusion that the Claimant acted in violation of Carrier Rules when he failed to back his vehicle into a parking space and was subsequently involved in a traffic accident. The Claimant admitted that he

backed up the vehicle and he also admitted that he knew that that was against the Rules.

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 in this case was disqualified from his position of Signal Foreman, which he had held for several years, as a result of his relatively minor Rule violation in this case. The Board finds that although there was just cause to issue the Claimant a written warning for his admitted Rule violation, it was simply unreasonable and arbitrary for the Carrier to disqualify the Claimant from his Signal Foreman position in response to his minor wrongdoing in this case. Therefore, we will order that there was no just cause for the disqualification and the Claimant should be returned to his position as Signal Foreman and made whole for any lost pay or other benefits that resulted from the wrongful disqualification. A written warning shall be placed in the Claimant's file apprising him of the Rule violation and instructing him to abide by the Rules in the future.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of February 2005.