

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37374
Docket No. SG-37480
05-3-02-3-536

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 Chesapeake and
(Ohio Railway 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 J. W. Goff, for compensation for all time lost, including overtime, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 701, when it imposed the harsh and excessive discipline of a 30 day suspension against the Claimant without meeting its burden of proving the charges in connection with an investigation held on September 6, 2001. Carrier's File No. 15(01-0156). General Chairman's File No. 01-78-PM. BRS File Case No. 12186-C&O(PM).”

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 August 24, 2001, Signalman J. W. Goff was directed to appear for a formal Investigation in connection with charges of unauthorized use of a Carrier vehicle and equipment, as well as failure to protect his assignment over the weekend. The Investigation was conducted, as scheduled, on September 6, 2001. As a result of the Investigation, the Claimant was found guilty as charged and assessed a 30-day suspension. 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 according to the testimony and evidence, including the Claimant's own testimony, the Claimant was guilty as charged. The Carrier points out that at the Claimant's insistent, Supervisor Signals M. C. Abner permitted the Claimant to take Company Vehicle 46221 home for the weekend; the Claimant had informed Abner that he would take calls over the weekend and would deliver the truck to the garage on Monday for some minor repairs. Several efforts were made to contact the Claimant over the weekend, but these all went unanswered. The Carrier points out that there is no evidence to support the Organization's allegation that the Claimant called back later and found that another employee had handled the work. The Carrier emphasizes that the Claimant admittedly did not answer any calls over the weekend.

As for the Organization's argument that the Claimant was not required to take calls on the weekend in question because of his vacation the following week, the Carrier asserts that this is incorrect. The Carrier maintains that only the weekend days following the vacation are included in the time away from required work. Moreover, this Rule was superseded when the Claimant made a commitment to his supervisor that he would take service calls. The Claimant therefore had a mandatory obligation to perform this work.

The Carrier goes on to point out that the Claimant was allowed to take his Carrier vehicle home for the weekend in order to deliver it to the garage for minor repairs and routine maintenance on Monday. The Claimant was supposed to contact Signal Foreman B. P. Chafin about the status of the vehicle once it had been delivered to the garage. When the Claimant did not make such contact, the Carrier attempted to contact the Claimant on Monday, Wednesday, and Thursday, but the Claimant failed to respond. The Carrier then contacted the garage, which indicated that the vehicle had not been in the shop at all during the week. As for the garage work order the Claimant supplied during the Investigation, the Carrier maintains that this is a feeble attempt to defend against the charges in that it does not serve as proof of delivery to the garage and does not absolve the Claimant from the responsibility of contacting his

supervisor if the truck could not be serviced due to a lack of parts. The Carrier emphasizes, in addition, that this document essentially is a blank form, unsigned, and not the original work order; instead, this was printed on the day before the Investigation.

The Carrier then asserts that Signal Foreman Chafin and Signalman E. L. Mack drove to the Claimant's house and noticed that the Carrier vehicle was not parked in the driveway. After a friend of the Claimant's told them where they could find the Claimant, Chafin and Mack found the missing Carrier vehicle parked in the driveway of a residence belonging to a friend of the Claimant's, and they observed the Claimant working on a Derby vehicle with tools from the Carrier truck. The Carrier asserts that this constitutes unauthorized personal use of the Carrier's truck and tools. The Carrier argues that there is no support for the Organization's position that the personal use of tools from Carrier vehicles is a common practice across the system, so long as the tools are returned to the vehicle. There is no official Carrier policy that advocates the use of Carrier property for any personal use.

The Carrier contends that the evidence demonstrates that the Claimant was guilty of unauthorized use of a Carrier vehicle and equipment, as well as failure to protect his assignment. The Carrier asserts that it has sustained its burden of providing substantial proof of the Claimant's guilt and obvious wrongdoing. Under these circumstances, the Carrier's actions were not arbitrary, capricious, and harsh. The Carrier maintains that the assessed discipline is consistent with the infraction.

The Carrier emphasizes that the Claimant performed absolutely no work for the Carrier on the days that he had possession of the Carrier vehicle. Had Supervisor Signals Abner known that the Claimant would not be available for service, he would not have allowed the Claimant to take the vehicle home. In addition, the Claimant did not deny that he was working on personal items, which constitutes unauthorized use of a Carrier vehicle and equipment. By failing to take any calls for service over the weekend, as he had agreed to do, the Claimant also failed to protect his assignment and failed to meet the agreed-upon conditions for taking the Carrier vehicle home. Under these circumstances, the 30-day suspension was fully justified.

The Carrier points out that the Claimant was afforded a fair and impartial Hearing, and all of his due process rights were protected. The Claimant was given proper notice of the charges, sufficient time to prepare a defense, the opportunity to produce and examine witnesses and evidence, and timely notice of the imposition of discipline.

The Organization initially contends that the Carrier failed to provide the Claimant with a fair and impartial Hearing, and also failed to meet its burden of proving the charges. The Organization maintains that although the basic facts are not in dispute, the Carrier chose to ignore the reasons and explanations surrounding the events at issue. The evidence adduced during the Investigation clearly shows that the Carrier had no basis for disciplining the Claimant. The Claimant had permission to take the Carrier vehicle.

The Organization acknowledges that the Claimant was at a friend's house and was seen using a Carrier-furnished tool. The Organization argues, however, that the Carrier failed to take into account the reason why the Claimant was there and using the Carrier-furnished tool. The Claimant explained that the truck repair that had been scheduled for Monday was rescheduled for Thursday; the Claimant was at his friend's house because the Claimant had arranged for that friend to give him a ride after leaving the Carrier vehicle at the garage. In addition, the Claimant was using a drill from the Carrier's truck to install a jack on a trailer hooked to his friend's truck, so that his friend could remove the trailer and pick up the Claimant at the garage. The Organization points to Supervisor Signals Abner's testimony that he told employees that they could use tools or any safety equipment, but these had to be returned to work. The Organization argues that the Claimant's use of Carrier equipment therefore did not violate the Carrier's policy or Rules.

The Organization then points out that there is no evidence that the Claimant was aware of the Carrier's policy regarding the use of a Carrier vehicle between a residence and a headquarters location. The Organization emphasizes that this policy was issued two years before the Claimant was hired, and there is no evidence that the Carrier ever instructed the Claimant that this policy even existed. The Organization argues that the Carrier failed to meet its burden of proof as to the Claimant's alleged unauthorized use of a Carrier vehicle and equipment, so this portion of the charge should be dismissed.

In connection with the charge that the Claimant failed to take calls on the weekend in question, the Organization contends that the record shows that the Claimant responded to the pages that he received, but that by the time he responded, the Carrier already had dispatched another employee. The Carrier acknowledged that there was no way to confirm or refute the Claimant's statement on this matter, so this portion of the charge should be dismissed.

As for the Claimant's alleged failure to deliver the vehicle to the garage, the evidence demonstrates that the Claimant did have an appointment with the garage to

have the repairs made on the Monday in question, but the garage had to cancel because it was unable to secure the necessary parts to make the repairs. The Organization points out that it also produced a document from the garage clearly stating that the appointment had been rescheduled. The Organization maintains that the Claimant was in the process of taking the truck to the garage when the triggering event, leading to the instant charges, occurred. The Organization asserts that because all aspects of the charges against the Claimant were adequately explained and the Claimant's version of events was not refuted, the Carrier failed to meet its burden of proof in this case.

The Organization argues that the Carrier's case was based on conjecture and speculation, and it failed to prove its case through established facts and evidence. The Carrier therefore violated the Agreement by failing to give the Claimant a fair and impartial Hearing. The Carrier had no basis for issuing discipline against the Claimant. The Carrier further violated the Claimant's rights by imposing excessive discipline against him. By assessing a 30-day suspension, the Carrier made it clear that it was seeking only to penalize the Claimant, not guide him in the performance of his work. 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 the employee's conduct. In the instant case, the Carrier did not impose discipline as a corrective measure, but for the sole purpose of punishing the Claimant. The Organization therefore asserts that the penalty was not warranted.

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

The Board reviewed the on-property record in this case and finds sufficient evidence to support the finding that the Claimant acted in violation of Carrier Rules when he took the Carrier vehicle home while he was on vacation. He failed to notify the Carrier of the location of the vehicle. The Carrier was justifiably concerned about the location of such expensive equipment and the Claimant failed to live up to his responsibilities as a Carrier employee when he failed to keep the Carrier apprised of his actions.

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.

There is no question that the Claimant deserved discipline for the wrongdoing in which he engaged in this matter. However, the Board finds that there was just cause for a ten-day suspension of the Claimant given the type of action in which he engaged. The Carrier issued the Claimant a 30-day suspension which the Board considers to be unreasonable and arbitrary given the fact that the Claimant had no bad intent and was merely negligent and careless in his failure to keep the Carrier apprised of where the truck was located. Consequently, the Board orders that the 30-day suspension be reduced to a ten-day suspension and the Claimant be made whole for the 20 days which we find to have been overly harsh and excessive.

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.