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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37446
Docket No. SG-37281
05-3-02-3-287

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Kansas City Southern Railroad

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern (KCS):

Claim on behalf of R. H. Ware, Jr., for removal of the discipline issued as a result of an investigation held on October 11, 2000, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when it disciplined the Claimant without meeting its burden of proving the charges. Carrier File No. K06015450. General Chairman’s File No. 004247. BRS File Case No. 11901-KCS.”

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.

In 1999, the Claimant was convicted of driving while under the influence. His driver's license was subsequently suspended. He did not report the suspension of his license to the Carrier and continued to work his regular assignment with another employee driving in his place. His license was again suspended for a second DWI conviction. After an Investigation, he was disqualified from his position because he was not properly licensed. The disqualification was upheld by a decision of the Board in Third Division Award 36400.

At the Investigation for the second license suspension, the Carrier learned of the first DWI conviction. After a second Investigation, the Carrier issued the Claimant a 30-day deferred suspension for the first license suspension. The deferred suspension would not be served so long as the Claimant did not commit another Rule violation within 180 days of notice of the deferred suspension. The record reflects that the Claimant was not compelled to serve the deferred suspension at issue in this claim.

The Organization contends that the 30-day deferred suspension must be set aside because the Carrier ". . . had already assessed discipline for the matter in dispute here (not reporting the 1998 DWI)." However, a close reading of our decision in Award 36400 clearly shows that the issue faced in that claim was the Claimant's disqualification for failing to possess a valid driver's license after his second conviction. Thus, the deferred suspension at issue herein is for a separate and discrete offense, i.e., the Claimant's failure to report the first conviction. The deferred suspension and associated Investigation, therefore, do not constitute double jeopardy. The claim is denied.

AWARD

Claim denied.

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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 22nd day of March, 2005.