

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40109
Docket No. SG-40589
09-3-NRAB-00003-080489**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Louisville & Nashville):

Claim on behalf of T. L. Brown, for payment for all time lost, including overtime, with any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, when it issued the harsh and excessive discipline of a 30-day suspension without providing a fair and impartial investigation and without meeting its burden or proving the charges in connection with an investigation held on June 18, 2007. Carrier’s File No. 15(07-0048). General Chairman’s File No. 07-13-1. BRS File Case No. 14025-L&N.”

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.

The Claimant was disciplined for conduct unbecoming an employee as a result of his allegedly having made threatening remarks (including threats of bodily harm) to Signal Maintainer Joyner. The Carrier official who imposed the discipline found the Claimant guilty of violating General Rule A, General Regulations GR-2 and GR-2-1, and the Carrier's Policy on Workplace Violence.

Our review of the record herein reveals that the Carrier's disciplinary action suffers from two significant flaws each of which is fatal to the Carrier's position.

First, according to the notice of charges and the transcript of the Hearing, the allegations against the Claimant occurred between June 5 and June 8, 2007 and relied solely upon the accusations of Joyner. There were no other witnesses to the alleged misconduct. The Claimant denied the allegations made against him by Joyner. As a result, the record sets up a classic example of one person's word against that of another. This requires that the credibility of the opposing witnesses be properly assessed. However, the record contains no credibility assessment by the official who conducted the Hearing. Moreover, the Carrier official who made the disciplinary decision was not present at the Hearing and was not, therefore, in a position to make his own credibility assessment. Accordingly, the record contains no proper basis upon which to conclude that the Claimant's testimony was less credible than that of Joyner.

Second, the Claimant was disciplined for four Rule and/or policy violations. However, none of the Rules and/or policies were read into the record or attached as exhibits. As a result, we are unable to determine whether any of them were violated.

Given the failures of proof noted above, the claim must be sustained. The Carrier is directed to exonerate the Claimant and make him whole for all losses resulting from the improper discipline. The Claimant's work records must also be expunged of any references to the discipline in question.

AWARD

Claim sustained.

Form 1
Page 3

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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 19th day of November 2009.