

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40257
Docket No. SG-39203
10-3-NRAB-00003-050675
(05-3-675)

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of D. Booker, for reinstatement to his former position with payment for all time lost, his seniority and benefits restored, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it failed to provide the Claimant with a fair and impartial investigation and then issued the harsh and excessive discipline of dismissal against the Claimant without meeting its burden of proof in connection with an investigation held on October 7, 2004. Carrier compounded this violation by failing to charge the Claimant within 30 days of first knowledge of the alleged infraction and provide a complete and accurate transcript of the investigation. Carrier’s File No. NEC-BRS(S)-SD-1053D. General Chairman’s File No. JY3210101010-18051. BRS File Case No. 13307-NRPC(S).”

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.

At the time of the relevant events, the Claimant was employed as a Signal Maintainer on the Northeast Corridor, headquartered at Penn Coach Yard in Philadelphia, Pennsylvania. On September 9, 2004, the Carrier directed the Claimant to attend a formal Investigation in connection with allegations of dishonesty and failure to perform his assigned duties. In particular, it was alleged that on several dates in July 2004, the Claimant left his work assignment and engaged in personal business while on duty and claimed full pay for the periods at issue. Following the Investigation, the Carrier found the Claimant guilty of the charges and dismissed him.

The facts of this case are not in dispute. Carrier vehicle AE-14799 is a Communications & Signal Department trouble truck. The Division Engineer observed unusual travel patterns on the vehicle while familiarizing himself with newly-installed software on the vehicle's automatic tracking system. On July 8, 2004, the Carrier hired an outside firm to conduct around the clock surveillance on the vehicle during the week of July 12, 2004.

At the Investigation, the firm's investigators testified as to their findings and presented a report of their surveillance activities. Their testimony established that on July 13, while on overtime, the Claimant drove the vehicle to the neighborhood of his residence, where he was observed conversing with a non-employee. On July 15 the Claimant drove the vehicle and made numerous stops to conduct personal business, ultimately arriving at his residence approximately two hours before the end of his shift. On July 16 while on duty, the Claimant took the vehicle and spent substantial periods of time at his residence.

The Claimant did not testify at the Investigation. He did not dispute any of the information offered by the private firm's investigators.

We carefully reviewed the record in its entirety. First, while the Organization raised numerous procedural objections to the discipline assessed against the Claimant, we find no evidence of any procedural irregularity which denied him his right to a full and fair Investigation. On the merits, the Organization does not dispute that the

relevant events transpired as described by the Carrier's witnesses. Because the testimony of those witnesses clearly supports the Carrier's allegations against the Claimant, the Carrier met its burden of proving his guilt by substantial evidence.

With respect to the penalty assessed, the Organization asserts that dismissal represents a harsh and excessive penalty. It notes that the Claimant had no prior discipline, and urges that the Carrier should have afforded him an opportunity to correct the behavior that led to his mistakes. We cannot agree. As the Carrier asserts, the Claimant engaged in unauthorized use of a Carrier vehicle, left his assignment for substantial periods of time to engage in personal business, and claimed pay for periods of time when he did not perform work. His conduct broke the bond of trust essential to the employer-employee relationship, and justifies dismissal regardless of his length of service and prior record. Therefore, we cannot find that the Carrier's dismissal was unwarranted, unfair, arbitrary, or an excessive exercise of its discretion to determine penalties. Consequently, the claim must be denied.

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 15th day of January 2010.