

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40449
Docket No. SG-40065
10-3-NRAB-00003-070316
(07-3-316)

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of J. S. Anderson, for payment for all time lost and to otherwise be made whole, as required by Rule 54 - Exoneration, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it issued the excessive discipline of a three-day deferred suspension against the Claimant without providing a fair and impartial investigation, without providing a proper notice of investigation and without meeting its burden of proving the charges in connection with an investigation held on February 2, 2006. Carrier's File No. 11-7-541. General Chairman's File No. 1-D-06 ANDERSON. BRS File Case No. 13848-NIRC.”

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.

On December 29, 2005, the Carrier directed the Claimant to report for a formal Investigation on January 5, 2006, which was postponed and subsequently held on February 2, 2006, concerning the following charge:

“... The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, with your alleged failure to protect your position on Thursday, December 29, 2005. Therefore, you are hereby charged with alleged violation of Metra Employee Conduct Rule "Q", Paragraph #1 and Engineering Special Instruction #1, Paragraphs #4 and #6. . . .”

The subject Rule in dispute is Metra Employee Conduct Rule Q, Paragraph No. 1, which states the following:

“Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority.”

Also at issue is Engineering Special Instruction No. 1, Paragraph No. 4, which quotes Employee Conduct Rule Q, Paragraph No. 1 verbatim. Paragraph No. 6 of the special Instruction states:

“If an employee is going to be absent, for whatever reason, the employee must notify the designated supervisor prior to the start of the [employee's] assignment. However, this notification, including voice mail messages, does not automatically give an employee an authorized absence.”

On February 16, 2006, the Claimant was notified that he had been found guilty as charged and was assessed a three work days' deferred suspension.

It is the position of the Organization that the Claimant was denied a fair and impartial Hearing because the Investigation was held in absentia. Additionally, it argued that the concept of fairness would indicate that the Carrier had improperly attempted to pyramid or “stack” like offenses within a small timeframe, which did not give the Claimant an opportunity to correct his behavior. Therefore, it concluded that the discipline should be set aside and the claim sustained as presented.

The Carrier argued that the Investigation was held in absentia after the Notice of Investigation was returned to it after three attempts at delivery to the Claimant's address. Based upon that, it was reasonable to go forward with the Hearing. On the merits it argued that the record substantiates that the Claimant was guilty as charged and the discipline was appropriate because it was based upon its Progressive Discipline Policy. Therefore, it asked that the discipline not be disturbed.

The Board thoroughly reviewed the transcript and record evidence, which constituted the first of five cases involving the Claimant. As previously stated in Third Division Award 40445 the Claimant offered no evidentiary proof that he was physically unable to attend the Hearing. Therefore, it must be concluded that he chose not to appear at the Investigation. We reaffirm the principle, set forth in Award 40445 that the Claimant was not obligated to attend the Investigation, but failing to do so deprives the reader of the record of rebuttal or alternative story.

It is clear that the Investigation was properly held in absentia. We will next address the Organization's procedural argument that the Carrier attempted to pyramid (“stack”) multiple violations on top of one alleged failure by the Claimant to protect his assignment. That argument has no relevance in this instance because the instant case was the initial violation and the “stacking” argument only applies to any subsequent cases that were allegedly improperly pyramided on this dispute.

The Board, having determined that the Claimant was not denied his Agreement due process rights, turns its attention to the merits. Our review of the transcript indicates that Claimant's immediate supervisor, Capital Project Signal Engineer R. Heim, testified that employees under his jurisdiction are required to call in prior to start of their tour of duty in order to request permission to be off work. Heim's office and mobile phone numbers are published in Engineering Special Instruction No. 1. On December 29, 2005, the Claimant did not call to request permission to absent himself from work, as required by Metra Employee Conduct Rule “Q,” Paragraph No. 1, and

Engineering Special Instruction No. 1, Paragraphs Nos. 4 and 6. The Organization's vigorous effort to defend the Claimant without his assistance could not overcome the unrefuted testimony of the Carrier's witness. Therefore, the Board has concluded that the Claimant's behavior was not appropriate. It is clear that the Carrier met its burden of proof that the Claimant was guilty as charged.

The only issue remaining is whether the discipline assessed was proper. Our review of the discipline imposed reveals that it was in accordance with the Carrier's Progressive Discipline Policy. Therefore, the Board finds and holds that the discipline was appropriate because it was not arbitrary, capricious or excessive.

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 14th day of May 2010.