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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40912
Docket No. SG-40954
11-3-NRAB-00003-090312**

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: (
(Illinois Central Railroad**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of J. L. Ferguson, for payment for all time lost, including overtime, and any benefits lost with his record cleared, account Carrier violated the current Signalmen’s Agreement, particularly Rule 35, when it issued the harsh and excessive discipline of a 5-day suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on March 27, 2008. Carrier’s File No. IC-BRS-2008-00001. General Chairman’s File No. IC-003-08. BRS File Case No. 14120-IC.”

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 violating Carrier Rules in connection with an injury he sustained to his right calf while loading a six-foot fiberglass ladder into his van on February 11, 2008. At the time of the incident, the Claimant had some 36 years of service with the Carrier. His work record did not reveal any similar disciplinary events.

Our review of the record did not reveal any procedural shortcomings of significance. According to the record on the merits, the Claimant had finished repairing the 27th Street crossing gate and was in the process of putting his ladder back into his work van. The vehicle is a bucket van with a platform bumper on the rear. The platform is about 18 inches off the ground and projects to the rear some 36 inches. The platform provides a means of climbing up into the bucket before it is raised.

The rear of the van has a double door providing access to the interior. The Claimant had opened the rear door on the passenger side of the van and was facing the driver's side while leaning over the platform to insert the ladder into the van. During his final lift and shove of the ladder to his right, the Claimant felt a sharp pain in his right calf. It was diagnosed as a partial tear or strain of the calf muscle.

During his testimony, the Claimant made certain comments about the events leading up to his injury. According to his testimony, he was in a hurry to put the ladder away due to heavy traffic in the area. When his supervisors arrived on the scene, he mentioned that getting up on the platform rather than leaning over the side would have been a better way to stow the ladder. He also thought he was injured because he was overreaching. Finally, it is also undisputed that the Claimant had not done the calf stretching exercises required each day by Engineering Rule E-13.

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Given the foregoing factors, we find the Carrier's disciplinary determination is supported by substantial evidence in the record. Accordingly, 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 10th day of March 2011.