

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40947
Docket No. SG-39671
11-3-NRAB-00003-0060452**

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

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

STATEMENT OF CLAIM:

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

Claim on behalf of P. W. Morton, for reinstatement to his former position with compensation for all lost wages, including skill pay, with all rights and benefits unimpaired and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when on May 27, 2005, Carrier issued the harsh and excessive discipline of dismissal against the Claimant without providing him with a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on May 18, 2005. Carrier’s File No. K06056026. General Chairman’s File No. 05-051-KCS-185. BRS File Case No. 13630-GWWR.”

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 dismissed for falsifying signal inspection records for January and February 2005. At the time of the incidents, the Claimant had some nine years of service with the Carrier. The record does not establish that the Claimant had any prior instances of discipline in his work history. The Investigation was held on the same day as a companion investigation on another misconduct charge. See Third Division Award 40948.

Our review of the record does not reveal any procedural irregularities of significance. On the merits, the record does show that the Claimant's record-keeping was not entirely accurate. However, in view of the unique mitigating circumstances involved, we find that the Claimant should be given a last chance to preserve his employment. His dismissal should be converted to a disciplinary suspension without pay. Subject to the Carrier's usual return-to-work requirements, the Carrier is directed to offer the Claimant reinstatement to his former employment status with seniority and the other attributes of that status unimpaired but without backpay associated with the time he has been out of service.

AWARD

Claim sustained in accordance with the Findings.

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 24th day of March 2011.