

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40953
Docket No. SG-39972
11-3-NRAB-00003-070183**

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: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link, Inc:

Claim on behalf of H. D. Smith, for the discipline issued to be removed with compensation for time lost and his seniority and employment benefits unimpaired and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Article 13 (Discipline), when it issued the excessive discipline of a 30 calendar day suspension against the Claimant without providing a fair and impartial hearing and without meeting its burden of proving the charges in connection with a fact finding session held on May 11, 2006. General Chairman’s File No. 06-029-MRL-87. BRS File Case No. 13730-MRL.”

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.

Although charged with three forms of misconduct, the Claimant was found culpable of only the following: climbing a pole after being instructed not to do so and for failing to have a rescue plan properly in place while performing pole line work near Nimrod, Montana, on April 5, 2006. At the time of the incidents, the Claimant had some 19 years of service with the Carrier.

Our review of the record does not reveal any procedural irregularities requiring comment. On the merits, it is undisputed that the Claimant did injure his back while on duty opening a garage door. As a result, his supervisor instructed him to only supervise the installation of some signal poles and do no climbing. However, while driving to Avon, Montana, the Claimant's supervisor observed the Claimant sitting atop a pole. The Claimant had used a ladder to climb the pole.

On his way back from Avon, the Claimant's supervisor again stopped to check on the Claimant's work. He noted that a crew member was pole climbing. Upon asking, the supervisor concluded that the Claimant had not established a proper rescue plan for the climber.

Although the Claimant gave explanations for these two instances at the Investigation, the transcript shows that he did not provide them when asked by his supervisor on the day in question.

We find the record to contain substantial evidence in support of the Carrier's determination that the Claimant did violate the Rule with which he was charged. Under the circumstances, we do not find any proper basis for disturbing the Carrier's disciplinary decision.

AWARD

Claim denied.

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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 24th day of March 2011.