

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42335
Docket No. SG-42566
16-3-NRAB-00003-140259**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(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 R. M. Sabala, III, for compensation for all time lost, including skill pay, with all rights and benefits unimpaired and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 13F, when it issued the harsh and excessive discipline of a 33-day actual suspension to the Claimant in connection with an Investigation held on May 29, 2013. Carrier’s File No. MRL-Sabala. General Chairman’s File No. 13-026-MRL-87. BRS File Case No. 14991-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.

The relevant facts in this case are largely uncontested. Because of a conviction for driving under the influence, which was unrelated to his employment with the Carrier, the Claimant's driving privileges were revoked for a period of six months. Between April 3 and May 3, 2013, the Claimant was absent from work, but had been granted paid flex time to cover his absence. Once his paid leave time was depleted, the Claimant reported for work on May 6, 2013. Without a driver's license, though, he was unable to perform the regular duties of his Signal Inspector position. After allowing him to perform office duties for two hours, the Carrier then sent him home. The Claimant was eventually directed to attend a Fact-Finding at which he was charged with his failure to report for duty with the necessary equipment, specifically, a valid driver's license, to perform his duties on May 6 - 10, 2013. Following the Fact-Finding, the Claimant was issued a 30-day suspension, which additionally required him to serve a three-day suspension that had previously been waived.

The Organization argues the Carrier could have accommodated the Claimant by either granting him a leave of absence or allowing him to team with another employee. Although the Organization maintains the Claimant had requested a leave of absence, the Carrier contends he only inquired about the possibility of obtaining such a leave. Even if the Claimant had made a request, the Board does not agree that the Carrier was under any obligation to grant one under these circumstances. We also do not agree that it was necessary for the Carrier to allow him to ride along with another employee. In this case, the Carrier's interest in maintaining productivity outweighs any need to find work for the Claimant, particularly when his situation was a result of his own actions.

The Board finds that the Carrier had substantial evidence to support its charge against the Claimant. We also find that the level of discipline imposed was not unreasonable. The Carrier points out that this was the Claimant's second disciplinary action within two years for failing to protect his assignment. The Board does not consider Third Division Award 23298 to be supportive of the Organization's position that the discipline was excessive. In that case, the Board vacated the discipline upon a finding that the Carrier therein had failed to give consideration to mitigating circumstances. We do not find that to be the case in the dispute before us. Rather, we find appropriate the Board's following statement in that Award:

“Let there be no doubt that this Board wholeheartedly supports and endorses the well established proposition that an employe is obligated to protect his/her assignment and that Carrier, in the exercise of its managerial prerogatives, may discipline an employe for infractions thereof. Innumerable decisions on this and all other Divisions have consistently upheld this principle and, because of their pervasiveness, these decisions need not be specified at this time.”

Protecting one’s assignment requires reporting for duty prepared to work. As a consequence of the Claimant not having a valid driver’s license, he was unable to perform an essential function of his job. For the reasons stated herein, the Board must deny the claim.

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 28th day of July 2016.