

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42336  
Docket No. SG-42659  
16-3-NRAB-00003-140371**

**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 reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time lost, including overtime and skill pay, and 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 Claimant the harsh and excessive discipline of dismissal without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on July 23, 2013. Carrier’s File No. MRL-R. Sabala. General Chairman’s File No. 13-035-MRL-87. BRS File Case No. 15021-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 service a three-day suspension that had previously been waived. The discipline in that case was upheld by the Board in Third Division Award 42335.

Upon the completion of his suspension, the Claimant was directed to report for duty at Helena, Montana, on June 25, 2013. He was told to be fully prepared to resume his normal duties and was warned that his failure to do so may result in further discipline, including termination. The Claimant did report for duty on June 25, 2013, but because he still did not have a valid driver's license, he was sent home and told to report the following day fully prepared to perform his duties. The Claimant did not report for work on June 26, 2013. He was consequently directed to attend a Fact-Finding in connection with his failure to report for duty with the necessary equipment to perform his duties on June 25 and 26, 2013. By letter dated August 16, 2013, the Claimant was advised that he was dismissed from service.

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 with the Organization's contention that the Claimant was disciplined twice for the same incident. It contends both disciplinary actions

stem from the same incident wherein the Claimant lost his driver's license for six months. The Claimant was not disciplined for losing his driving privileges. Rather, he was disciplined for separate incidents of his failing to report for duty prepared to work. These incidents were not continuous inasmuch as they were separated by the period of his suspension.

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. A lesser level of discipline would not be constructive inasmuch as the Claimant would still be unable to work. 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.