

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42449  
Docket No. SG-42164  
16-3-NRAB-00003-130105**

**The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.**

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(  
(Northeast Illinois Regional Commuter Railroad  
( Corporation (Metra)

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:**

**Claim on behalf of J. L. Rozanski, to rescind all discipline issued and have any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53, when it issued him the harsh and excessive discipline of three work days deferred suspension without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on November 8, 2012 [2011]. Carrier’s File No. 11-7-818. General Chairman’s File No. 29-D-11. BRS File Case No. 14827-NIRC.”**

**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.

This case involves a 3-day deferred suspension assessed to a Signalman who allegedly reported late for work, then attempted to falsify payroll records.

As this is a discipline case, the Carrier has the burden of proof.

On October 11, 2011, the Claimant was required to work overtime on a Saturday, beginning at 6:00 A.M. He had been instructed to report to work at a worksite. Instead, he reported to work at an office location. There is a dispute as to when he actually reported. The Claimant says he was there on time. The Carrier has a fingerprint-activated time clock which shows him clocking-in at 7:20 A.M. There is no dispute that the Claimant did not show up at the worksite until noon. There is also no dispute that the Claimant filled out a timesheet showing overtime for the full day – 6:00 A.M. -5:00 P.M.

The Organization raises a variety of issues. First, they say the Investigation has fatal procedural flaws and, therefore, this Board should not get to the merits of the case. Specifically, they say that the Supervisor of the Claimant's immediate supervisor was the Hearing Officer, the Charging Officer, and the Disciplining Officer. They say that this, in itself, is a denial of a fair and impartial hearing as required by the Collective Bargaining Agreement (CBA).

On the merits, the Organization says that the Carrier has no direct evidence that the Claimant was not on site at 6:00 A.M. as he claims he was. He was clearly at the office location at 7:20 A.M. The Claimant says he was sick but still showed up. He claims he did not go to the worksite, as instructed, but instead went to the office because he was sick. He says he forgot to clock-in when he arrived at 6:00 A.M. but remembered to do so at 7:20 A.M. He says he was with another employee from 6:00 A.M. He says he started to feel better at about 10:00 A.M. and made his way to the job site by noon. He, at first, claimed that he called his Supervisor in the morning to let him know about the late clock-in and the fact of being sick. With respect to the timecard, the Claimant says that the Supervisor told him he would not be paid for the morning when he was sick, so he thought the Supervisor would simply correct the timecard for him.

The Organization elicited evidence in the Investigation that the Carrier has had others forget to clock-in until later and have not disciplined them. Therefore, they say, the Claimant has received disparate treatment.

With respect to the procedural issue, the Carrier says that a review of the record shows that the Claimant did receive a fair and impartial hearing. He had proper notice, he knew the case to be met, he appeared with his representative, offered testimony, was given the opportunity to question all witnesses, examine all evidence, and make a closing statement.

On the merits, the Carrier points to a number of inconsistencies in the evidence and to the self-serving nature of the testimony by the Claimant. First, the fellow employee that the Claimant says he was with in the office received a telephone call from the Claimant at 6:12 A.M. This was proven through telephone records introduced at the hearing. They point out that it is inconsistent with being in the same office. When confronted with this evidence in the hearing, the Claimant had no good response. With respect to the Claimant's testimony that he had called his Supervisor in the morning to report his delayed clocking-in and his illness, the Carrier refuted this by introducing evidence of a telephone message left at the office of the Supervisor at 1:17 P.M. The Supervisor testified that indeed others had clocked-in late without discipline. However, his evidence is that they immediately called him on his cell phone to report their error. The Supervisor testified that the Claimant knew to call him on his cell, even on weekends, and to wake him up if necessary. He also knew that he should have booked in sick if he were sick so that others could have been called to perform the work, rather than leave the gang short-handed for 6 hours. The Supervisor testified that the Claimant had done this before and knew the procedure. With respect to the timesheet, the Supervisor clearly told the Claimant that he would not be paid for the 6 hours he was "sick." In the face of this, the Claimant still made this claim – they say intentionally falsifying his records.

The Rules in question state, in relevant part, or in summary:

**"RULE 53 – INVESTIGATIONS AND DISCIPLINE**

(a) An employee who has been in the service more than ninety (90) days will not be disciplined or dismissed from service without a fair and impartial investigation, at which investigation he may be assisted by one or more duly accredited representatives of his own choosing. He will be advised in writing at least seventy-two (72) hours prior to such investigation of the exact charge or charges against him. At such investigation he shall have the right to call witnesses to testify in his behalf. His representative and Carrier representatives will have the

right to cross-examine witnesses (those who testify) in support of the charges for and against the employee.”

Rule Q says that employees must report at the appointed time and must not absent themselves without proper authority.

Rule N says that employees must not be dishonest.

With respect to the procedural issue raised by the Organization, this Board finds no violation of the CBA. There is some controversy in the industry about Hearing Officers who hold multiple roles. However, this industry is unlike any other. Absent specific Agreement language, there is no general Rule which prohibits this. In fact, there is some argument that having the Hearing Officer also be the one to make discipline decisions is in keeping with a fair and impartial hearing, as the Hearing Officer is the best one to make determinations of credibility of the witnesses. Without opining on this issue, the Board turns to the actual transcript of the hearing. After a complete review of this document, the Board must agree with the Carrier – this particular hearing afforded the Claimant all of the rights included within the rubric of a fair and impartial hearing. Thus, the CBA requirements, in this respect, were met.

Turning to the merits of the case, this Board finds that the Claimant knew where he was to show up for work. He failed to do so. This Board is also persuaded by the evidence of the telephone records that the Claimant did not show up at the office location until 7:20 A.M. when he clocked-in. Thus, this Board finds that the Claimant intentionally attempted to deceive the Carrier in this respect. The Claimant also provided no rationale in the hearing for why he waited two hours from when he said he felt better until he showed up at the jobsite. With respect to the call to his Supervisor at 1:17 P.M., the Board finds this disingenuous. If the Claimant truly forgot to clock in until 7:20 A.M., this is when he should have called his Supervisor. Similarly, if he was sick, he should have called his Supervisor before he even went to work. To leave a voicemail in the office of the Supervisor some hours after he actually showed up at the jobsite, when he knew that the Supervisor would not be in the office for a further two days appears, to this Board, to attempt to further “play games”. Similarly, with respect to the timecard, the Claimant clearly knew he did not work the full day. To say otherwise was deceitful. There was also no disparate treatment for this employee.

Overall, despite very well-argued presentations by the Organization, it is clear to this Board that the Claimant's actions violated Rules Q and N and that the Carrier has met its burden of proof.

With respect to the quantum of discipline, dishonesty, and theft of time is often met with termination. It seems to this Board that this Claimant was given very generous mitigation for his years of service. This Board sees no need to interfere with the lenient discipline assessed.

**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 31st day of October 2016.