

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42912
Docket No. SG-42914
18-3-NRAB-00003-150116**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood that:

Claim on behalf of C.D. Schell, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time and benefits lost, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, 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 November 21, 2013. Carrier’s File No. 2014-158311. General Chairman’s File No. 13-208-15D. BRS File Case No. 15080-L&N.”

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.

By notice dated November 7, 2013, the Claimant was directed to attend a formal Investigation on charges that the Claimant allegedly violated Carrier rules in connection with an October 30, 2013, incident in which more than 200 feet of Carrier cable was found by a Carrier special agent at the Claimant's listed home address, with this cable allegedly being taken without the Carrier's approval. The investigation was conducted, after a postponement, on November 21, 2013. By letter dated November 27, 2013, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and that he was being dismissed from the Carrier's service. The Organization thereafter filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because no procedural error occurred during the on-property handling of this matter, because the Claimant received all due process rights to which he was entitled, because substantial evidence in the record proves the Claimant to be guilty as charged, because there is no reason that would warrant overturning or reducing the discipline imposed, and because the discipline imposed was appropriate and cannot be deemed excessive in this case. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to provide the Claimant a fair and impartial Investigation, because the Carrier failed to meet its burden of proving the charges against the Claimant by substantial evidence, because the Carrier could not establish that the disputed cable belong to the Carrier or that the Claimant removed it from Carrier property, because the Carrier had not resided at the residence in question for six months prior to the charges, and because the discipline imposed was harsh and excessive.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant was involved in any theft or misappropriation of Carrier property and, therefore, this claim must be sustained. The Carrier witness at the hearing stated that no one saw the Claimant take the cable, no one reported the cable missing, and no one knows how long the cable had been at the Claimant's former address. Consequently, there was simply insufficient evidence that this Claimant was involved in any wrongdoing whatsoever.

It is fundamental that in all cases of discipline, the Carrier bears the burden of proof. The Carrier must come forward with sufficient evidence to prove that the Claimant was guilty of some wrongdoing. In this case, the Carrier simply failed to prove that the Claimant engaged in any wrongdoing. Although the Carrier bases its case on “circumstantial evidence,” this Board must find that the evidence in this case is simply insufficient to sustain the charges against the Claimant by a preponderance of the evidence. Therefore, the Board has no choice but to sustain the claim.

AWARD

Claim sustained.

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 14th day of February 2018.