

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42914
Docket No. SG-42952
18-3-NRAB-00003-150165**

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 B.K. Rodgers, 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 January 8, 2014. Carrier’s File No. 265606-1-01108R.14. General Chairman’s File No. 14-178-01D. BRS File Case No. 15089-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 December 23, 2013, the Claimant was directed to attend a formal Investigation on charges that the Claimant allegedly violated Carrier rules by allegedly failing to inform the Carrier of misconduct allegedly committed by a member of the crew that Claimant was supervising on October 14, 2013, which became known to the Carrier on December 16, 2013. The investigation was conducted, after a postponement, on January 8, 2014. By letter dated January 17, 2014, 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 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 committed fatal procedural errors, because the Carrier failed to meet its burden of proving the charges against the Claimant by substantial evidence, 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 procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was guaranteed all of his due process rights throughout the proceeding. The record reveals that the hearing was postponed by mutual agreement because of the Christmas and New Year's Day holidays.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of dishonesty and other rule violations when he failed to inform his supervisor that an employee assigned to his gang had been involved in an incident involving improper sexual advances on a minor. The record reveals that the Claimant, who picked up a packet of materials regarding the incident, did not

turn them over to his supervisor but instead passed the documents over to the allegedly offending employee. The Claimant failed to inform a Carrier officer what had occurred, and he knew that the hotel's general manager wanted to bring this matter to the attention of the Carrier and he failed to do that. This was a dishonest act on the part of the Claimant.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was guilty of the very serious offense of dishonesty. Dishonesty is often a dismissible offense, even on the first occasion. The Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it made the decision to terminate the Claimant for his behavior in this case. Therefore, the claim must be denied.

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 14th day of February 2018.