

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42915
Docket No. SG-42982
18-3-NRAB-00003-150139**

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 J.R. Eyler, 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 50 – Discipline/Initial hearing, 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 December 16, 2013. Carrier’s File No. 2014-163308. General Chairman’s File No. JRE_INSV. BRS File Case No. 15102-B&O.”

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 6, 2013, the Claimant was directed to attend a formal Investigation on charges that the Claimant allegedly violated Carrier rules in connection with a November 8, 2013, incident in which the Claimant allegedly willfully neglected his duty and did not exclusively devote himself to the Carrier's service by using his cellphone while traveling on rail; allegedly failed to announce occupancy of the main track prior to initial occupancy, failed to maintain communications while operating on rail, exceeded the maximum allowed speed, failed to keep proper spacing of OTE, and collided with a backhoe, causing damage; and allegedly failed to update his ORM book to include the hazards of the changing tasks. The Investigation was conducted, as scheduled, on December 16, 2013. By letter dated January 15, 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 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 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. Although there was some delay to the issuance of the charges against the Claimant and the holding of the hearing, this Board finds that it was handled in a reasonable amount of time after

the incident. Moreover, the record reveals that the Claimant was guaranteed all of his due process rights throughout the proceeding.

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 violating several rules and was operating a dump truck in a reverse direction and collided with a backhoe. The Claimant admitted to his supervisors that he had been in a heated discussion on his phone at the time of the collision. The record reveals that the Claimant was operating his equipment in an unsafe and careless manner and caused a great deal of damage. The Claimant's actions violated several Carrier rules.

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 was dismissed for his wrongdoing in this case. The Claimant had a relatively short length of service with the Carrier and, coupled with his past disciplinary record, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment after this serious accident. Therefore, this 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.