

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42917
Docket No. SG-43026
18-3-NRAB-00003-150210**

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
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

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

Claim on behalf of B.R. Rogers, 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 15, 2014. Carrier’s File No. 2014-164619. General Chairman’s File No. 14-137-01D. BRS File Case No. 15092-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 Hearing on charges that the Claimant had violated Carrier rules in connection with an October 14, 2013, incident when he allegedly, while checking into a motel, engaged in conduct unbecoming a Carrier employee by harassing the public and hiding from the police. The notice further stated that the Carrier received information about this incident on December 16, 2013, and confirmed that information on December 20, 2013. The Investigation was conducted, after a postponement, on January 15, 2014. By letter dated January 24, 2014, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, 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 errors occurred during the on-property handling of this matter, because substantial evidence establishes that the Claimant is guilty as charged, because the discipline imposed is appropriate and cannot be deemed excessive in this case, and because there is no reason that would warrant overturning or reducing the discipline imposed. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proving that the Claimant was guilty as charged, because the Carrier based its belief that the Claimant was guilty on second-hand testimony and evidence that was refuted by the Claimant, because no charges were filed by the police, and because the discipline imposed was arbitrary, capricious, and a blatant abuse of the Carrier's discretion.

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 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 engaging in inappropriate conduct while he was a member of a signal construction team that was being lodged in the Clarion Inn in Gulfport, Mississippi. The record reveals, and the Claimant admits, that the Claimant made an effort of attempting to get a thirteen-year-old girl to come to his hotel room in front of her father. That action on the Claimant's part led to an altercation and a foot chase with

the girl's father and the police being called. The Claimant was also physically punched in the face.

Although the Organization takes the position that this occurred not on Carrier time, it is clear that there was a nexus that made this an incident for which the Carrier could assess discipline. The Claimant was staying with his gang at a Carrier-retained hotel when this all occurred.

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. This 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 very serious wrongdoing which put the Carrier in a bad light and violated a number of Carrier rules. Given the seriousness of this offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it decided to terminate the Claimant's employment. 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.