

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42918
Docket No. SG-43027
18-3-NRAB-00003-150211**

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 T.A. Kilgore, for compensation for all lost time and benefits, including overtime, and the removal of any reference to this matter from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, when it issued the Claimant the harsh and excessive punishment of a thirty-day suspension without providing him a fair and impartial investigation and without meeting its burden of proving the charges in connection with an Investigation held on February 19, 2014. Carrier’s File No. 2014-164618. General Chairman’s File No. 13-33-CD. BRS File Case No. 15133-C&O(CD).”

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 October 14, 2013, the Claimant was directed to attend a formal Hearing on charges that the Claimant had violated Carrier rules when he allegedly fueled his Carrier vehicle and then drove away without paying for more than \$100.00 in fuel on October 6, 2013. The Investigation was conducted, after four postponements, on February 19, 2014. By letter dated March 10, 2014, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being assessed a 30-day suspension. 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 and the Claimant's admissions establish that the Claimant is guilty as charged, because the discipline imposed cannot be deemed excessive given the facts of 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 Claimant simply made an honest mistake and immediately offered to pay for the fuel as soon as he was made aware of the situation, because no charges were filed, because the gas station owner and the local police wrote letters in support of the Claimant, 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 Board has reviewed the evidence and testimony in this case, and we find that although the Claimant did fill a Carrier truck with 102 dollars' worth of fuel and left without paying for it, he did not intend to defraud the Carrier at all. The Claimant was either tired or distracted and simply left. He obtained no gain for himself as a result of it. The record contains a letter from the store owner of the Garrison Short Stop, who states that, "I do not have a problem with this. It has happened with people in the past and still does with some customers; they talk and

just forget. It is truly an honest mistake. They always come back to pay as I know Tim would have also.”

In her statement, Cindy Applegate states, “I do not believe under any circumstances this was done on purpose, I do believe it was an accident.”

The Claimant himself testified about how much he had been working. He stated that he just forgot.

It is fundamental that there has to be some type of real rule violation in order to assess discipline. In this case, the Board must find that the Carrier has simply not put in sufficient proof of any rule violation or dishonesty on the part of this Claimant. Therefore, this claim must be sustained.

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.