

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42922
Docket No. SG-43055
18-3-NRAB-00003-150288**

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 M.T. O'Regan, for reinstatement upon receiving medical clearance, account Carrier violated the current Signalmen's Agreement, particularly Rules 47 and 48, when it issued the harsh and excessive discipline of dismissal to the Claimant without providing him a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on April 2, 2014. Carrier's File No. 2014-170286. General Chairman's File No. SCL-06-06-14D. BRS File Case No. 15198-SCL.”

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 2, 2013, the Claimant was directed to attend a formal Hearing on charges that the Claimant had violated Carrier rules when he allegedly was involved in possible criminal conduct relating to a vehicular accident that may be related to his employment with the Carrier and adverse impact upon the Carrier on November 2, 2013, and when he allegedly marked off under false pretenses related to this incident on November 7, 2013. The investigation was conducted, after eight postponements, on April 2, 2014. By letter dated April 22, 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 the Claimant was afforded a fair and impartial Investigation, because substantial evidence and the Claimant's admissions establish that the Claimant is guilty as charged, and because the discipline imposed was fully justified and warranted. The Organization contends that the instant claim should be sustained in its entirety because the Carrier has failed to meet its burden of proving that the Claimant was guilty as charged, because the Carrier failed to prove that the Claimant's actions resulted in an adverse effect upon or was detrimental to the Carrier, because the Claimant accepted responsibility for his actions and was honest throughout the proceedings, because the Claimant did not mark off under false pretenses, and because the Carrier abused its managerial discretion by imposing the harsh and excessive discipline of dismissal when a lesser penalty would have been sufficient.

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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of a variety of offenses when he illegally drove a vehicle under the influence of alcohol and hit two pedestrians and caused injuries, illegally left the scene of the accident without stopping to aid the victims or summon emergency services, and attempted to have his truck repaired in Georgia to avoid detection by the authorities. The Claimant was subsequently arrested and failed to report to work for the Carrier on November 7, 2013, because he was incarcerated. The Claimant falsely submitted payroll documents claiming that he was sick on

November 7, 2013, and he subsequently pled guilty to third-degree felony resulting in a 12-month driver's license suspension.

The Claimant's actions violated several Carrier rules, including engaging in criminal conduct that damaged the Carrier's reputation. The Claimant admits almost all of the charges against him.

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 a very serious offense. The Claimant had very little seniority at the time of the incident. 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.