

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42935
Docket No. SG-43463
18-3-NRAB-00003-160126**

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 A.J. Ginn, for the removal of the disciplinary entry on his record dated November 16, 2012, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, when it failed to cancel this disciplinary entry from the Claimant’s record as a result of his maintaining a clear record for a period of six months following the date of said entry. Carrier’s File No. 2014-178122. General Chairman’s File No. 14-63-CD. BRS File Case No. 15364-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.

The Organization filed the instant claim on the Claimant's behalf, alleging that the Carrier violated the governing Agreement when it failed to remove a disciplinary entry from the Claimant's record after he maintained a clear record for six months following that disciplinary entry. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to remove the disciplinary entry as mandated by the Agreement, and because the Carrier admitted that entries in its system remain on an employee's personal service record for the employee's entire career and despite what the Agreement clearly states. The Carrier contends that the instant claim should be denied in its entirety because there is no requirement in the Agreement that all records of prior discipline are to be deleted, and because the Organization has failed to meet its burden of proof.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it failed to delete a disciplinary entry from the Claimant's record pursuant to Rule 55. Therefore, this claim must be denied.

This case involves Rule 55, which states the following in Section (k):

“(Effective July 1, 1963) After a signal employee has established 5 years seniority under the Signal Agreement, a clear record for the first or second six months of a calendar year subsequent to July 1, 1963, will cancel one disciplinary entry on service record made prior to the six months of clear record. A clear record for one calendar year subsequent to July 1, 1963, will cancel three disciplinary entries on service record made prior to the year of clear record. Entries will be canceled from the latest date or in reverse order.”

Although the Organization makes the argument that after the various periods of time set forth in Rule 55(k) that the reference to any discipline shall be deleted, the rule does not state that. The rule simply states that the discipline shall be canceled. The Board agrees that “canceled” does not mean “stricken” or “expunged,” as the Organization argues. The Carrier simply cannot use that

disciplinary action to support future discipline, but there is no requirement in that rule that the Carrier must expunge any reference to the previous disciplinary incidents from the employee's record. Although the use of the word "canceled" probably was not the best when they designed this Agreement, it is clear from this record that "canceled" does not mean "expunged" or "deleted." 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.