

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42938
Docket No. SG-43509
18-3-NRAB-00003-160238**

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 P.D. Hicks, for reinstatement to his former position with payment for all time and benefits lost, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50-Discipline/Initial Hearing, when it assessed the Claimant the harsh and excessive discipline of a twenty (20) calendar day actual suspension and barred him from holding a leadership position for a period of two years, without providing him a fair and impartial investigation and without meeting its burden of proving the charges against him in connection with an Investigation held on December 8, 2014. Carrier’s File No. 2015-183456. General Chairman’s File No. PDH-INSV. BRS File Case No. 15360-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 November 14, 2014, the Claimant was directed to attend a formal hearing on charges that the Claimant had violated Carrier rules in connection with an October 14, 2014, incident in which the Claimant allegedly had failed to return to work immediately and for the remainder of the day after dropping a Carrier truck off at a repair shop. The Investigation was conducted, after a postponement, on December 8, 2014. By letter dated January 6, 2015, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being assessed a 20-day actual suspension, along with being barred from holding any leadership position for a period of two years. 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 establishes that the Claimant is guilty as charged, and because the discipline imposed was fully justified. The Organization contends that the instant claim should be sustained in its entirety because the Claimant was not afforded due process during the Investigation, because the Carrier has failed to meet its burden of proving that the Claimant was guilty as charged, because the Carrier failed to provide the Claimant with the proper tools to fulfill the duties of the position as he filled in as a foreman, and because the Carrier subjected the Claimant to disparately harsh treatment in that it issued only a five-day actual suspension to the other claimants involved.

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 violating Carrier Operating Rules 104.1 and 104.3 when he left the worksite in the morning to take his truck to the repair shop and did not return to the worksite for the remainder of the day on October 14, 2014. As a result, the Claimant failed to properly perform the responsibilities of his position and put into payroll for the full day of work. The record reveals that the Claimant received compensation for a ten-hour workday that day, including a 20-minute paid lunch.

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.

Given the Claimant's previous disciplinary background, when coupled with the seriousness of this incident, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the 20-day suspension to the Claimant. 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.