

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42939  
Docket No. SG-43559  
18-3-NRAB-00003-160300**

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 R.L. Hill, 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 50 Discipline – Initial Hearing, 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 December 30, 2014. Carrier’s File No. RLH-INSV-XV. General Chairman’s File No. 2015-184807. BRS File Case No. 15359-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 December 22, 2014, the Claimant was directed to attend a formal Hearing on charges that the Claimant had violated Carrier rules in connection with a November 27, 2014, incident in which the Claimant allegedly had left Carrier property after working four hours but then paying himself for the full eight hours of scheduled work that day; that the Claimant had allegedly failed to report to his headquarters for assigned overtime on December 13, 2014; that the Claimant allegedly had failed to accept signal trouble calls on December 13, 2014; and that the Claimant allegedly had sat in his vehicle at Gable Avenue Yard for over six hours without moving on December 13, 2014. The Investigation was conducted, as scheduled, on December 30, 2014. By letter dated January 27, 2015, 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 establishes that the Claimant is guilty as charged, and because the discipline imposed was warranted and fully justified. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to afford the Claimant a fair and impartial Investigation, because the Carrier has failed to meet its burden of proving that the Claimant was guilty as charged, because the Carrier ignored the mitigating circumstances surrounding the emergency at the Claimant's home on December 13, 2014, 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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier Rules 104.6, 104.7, 104.9, and 104.10 when

he failed to perform work and subsequently filed payroll records that were not accurate. The record reveals that the Claimant spent only four hours on the property and yet claimed pay for eight hours on November 27, 2014. The Claimant did not obtain permission from his supervisor to leave before his designated off-duty time.

On December 13, 2014, the Claimant was assigned to come to work and came in 45 minutes late. The record also reveals that the Claimant departed early or failed to perform service on December 13, 2014, as well.

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. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

Although the Claimant was found guilty of these various offenses in this case, a thorough review of the record makes it clear that there were some misunderstandings between the Claimant and his supervisor, Mr. Hodges. There were telephone calls that the Claimant contended that he made that Mr. Hodges does not deny but simply does not recall. There are other mitigating factors that are apparent in this record that come from the confusion as to whether or not the Claimant was given permission to work from home on a holiday or whether he was required to come to work and work on the property that day.

Given those mitigating factors, the Board cannot find that the Carrier's action in terminating this relatively long-term employee was justified. Therefore, we order that the Claimant be reinstated to service, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.

**AWARD**

**Claim sustained in accordance with the Findings.**

**Form 1  
Page 4**

**Award No. 42939  
Docket No. SG-43559  
18-3-NRAB-00003-160300**

**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.**