

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42942  
Docket No. SG-43703  
18-3-NRAB-00003-160486**

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. Rains, for reinstatement to service with all seniority and benefits unimpaired, compensation for all lost wages, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 6 – DISCIPLINE, 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 July 24, 2015. Carrier’s File No. CSX-286652/2015-192446. General Chairman’s File No. JH-42-8-17-15. BRS File Case No. 15365-CSX(N).”

**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 February 6, 2015, the Claimant was directed to attend a formal Hearing on charges that the Claimant had violated Carrier rules when he allegedly was late in reporting to safety certification class on January 29, 2015. The investigation was conducted, after two postponements, on July 24, 2015. By letter dated August 7, 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 appropriate in light of the seriousness of the offense and in accordance with the Attendance Policy. 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 Claimant's alleged violations were the result of medical issues, because the Claimant was not willfully dishonest, 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 100.1, 104.6, and the CSXT Absenteeism Policy when he failed to appear for a 7:30 A.M. training on December 29, 2015. The Claimant admittedly showed up significantly late and originally stated that he was lost and believed the class was to begin at 9 A.M. The Claimant subsequently admitted that he had simply overslept, and he confessed that he had earlier misrepresented the reason. Although the Claimant states that he was on

numerous medications, the balance of his testimony does not support that those medications caused him to oversleep.

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.

Although a tardiness of several hours initially seems like a poor reason for a dismissal, the record reveals that this Claimant had been assessed five attendance-related incidents prior to the case at issue in this proceeding. The Carrier's policy subjects an employee to a possible dismissal after he has reached the third step of the Attendance Policy. The Claimant could have been dismissed on an earlier occasion. Given the previous disciplines for excessive absenteeism, coupled with this most recent episode of tardiness, as well as the relatively short service of the Claimant, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated 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.