

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42945  
Docket No. SG-43876  
18-3-NRAB-00003-160666**

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 T.A. Kilgore, for reinstatement to his former position with seniority and benefits unimpaired including monthly credits with the Railroad Retirement Board, compensation for all time lost, including overtime, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, 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 8, 2015. Carrier’s File No. 290766. General Chairman’s File No. 15-101-CD. BRS File Case No. 15462-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.**

**By notice dated June 25, 2015, the Claimant was directed to attend a formal hearing on charges that the Claimant had violated Carrier rules in connection with a June 17, 2015, incident in which the Claimant allegedly was involved in an at-fault vehicle accident causing damage to his Carrier vehicle, submitted an inaccurate accident report, and made misleading statements relating to the accident. The investigation was conducted, as scheduled, on July 8, 2015. By letter dated July 24, 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 in conformance with the Carrier's 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, 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 Operating Rules 100.1, 104.2, 104.4, and the Carrier's Ethics Policy when he misled the Carrier and concealed facts relating to an at-fault vehicle accident that he was responsible for on June 17, 2015. The Claimant eventually admitted to damaging the vehicle in the accident. However, the**

Claimant was dishonest and had to be confronted with video evidence before he told the truth and made his admission.

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.

The Claimant in this case was properly found guilty of dishonesty. Dishonesty is often a dismissible offense, even on the first occasion. Given the seriousness of this offense, coupled with the Claimant's disciplinary background, which includes several suspensions, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment in this case. 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.