

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42957  
Docket No. SG-43211  
18-3-NRAB-00003-150453**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 of Railroad Signalmen on the CSX Transportation (formerly Baltimore & Ohio):**

**Claim on behalf of C.R. Flowers, for compensation for all time lost and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50, when it assessed the Claimant the harsh and excessive discipline of a 30 calendar day suspension without providing him a fair and impartial Investigation or meeting its burden of proving the charges in connection with an Investigation held on July 8, 2014. Carrier’s File No. 2014-175556. General Chairman’s File No. CRF-INSV. BRS File Case No. 15248-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.**

At the time of his discipline, the Claimant had five years of service. On June 30, 2014, the Claimant was given notice of an Investigation in connection with the following charge:

**“The purpose of this formal Investigation is to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 0615 hours, on June 4, 2014 at or near milepost BN 211.23, when, during the morning briefing, you became agitated and quarrelsome with [your] manager while discussing the ORM process and your entries into your ORM book. You refused to calm down and continued to be argumentative and display open hostility toward your manager until you were sent back to the CLC Hotel for the remainder of the day.**

**In connection with the above incident, you are charged with failure to properly and safely perform the responsibilities of your position, conduct unbecoming a CSX employee, displaying disrespectful behavior toward your manager, and possible violations of, but not limited to, CSXT Operating Rules 100.1 and 104.2.”**

After a formal Investigation on July 8, 2014, the Claimant was assessed a 30-day calendar day suspension for violation of Rules 100.1 and 104.2.

The Carrier contends that the discipline is appropriate because the Claimant was a short-tenured employee found guilty of a Major Offense, for which he could have been discharged. The Carrier contends that it has provided sufficient evidence that the Claimant was insubordinate and quarrelsome during the job briefing, and that he became argumentative and agitated with Engineer of Signal Construction, Robert Cotter, to the point where the Claimant had to be sent back to the hotel for the day. The Carrier contends that the Claimant’s conduct violated Rules 100.1, which reads, in part, “Employees must know and comply with the rules, instructions, and procedures that govern their duties. They must comply with the instructions of supervisions,” and Rule 104.2, which provides, “Employee behavior must be respectful and courteous. Employees must not be any of the following: ...b. Insubordinate, or ...d. Quarrelsome.”

The Organization contends that the Carrier abused its discretion by imposing a 30 calendar day suspension instead of referring the Claimant to its EAP for treatment, as he is a combat veteran who suffers from post-traumatic stress disorder (PTSD). The Organization contends that the Claimant's supervisor was aware of his medical condition but failed to consider this in the manner he treated the Claimant. The Organization contends that the supervisor's instructions were improper and undermined the purpose of the ORM book.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

The Carrier determined that the Claimant disagreed with job briefing instructions and would not comply, stating that if his manager did not like it, "he could fire him." While the Organization claimed that the Claimant was not purposefully quarrelsome and was not insubordinate at all, it does not dispute that the Claimant disagreed with his supervisor during a job briefing, which led to a heated discussion between them.

There is sufficient evidence in this record that the Claimant was insubordinate and quarrelsome, as he refused to comply with the instructions given to him by his supervisor during a job briefing. If the Claimant felt that the instructions were improper, he had the option to "obey now, grieve later," not to engage in a heated discussion to the point of being sent back to the hotel. The Board finds that sufficient evidence exists to support the findings against the Claimant. Furthermore, we find no support for the allegations that the Claimant was not afforded a fair and impartial hearing. The Claim is denied.

**AWARD**

Claim denied.

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**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.**