

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42960
Docket No. SG-43557
18-3-NRAB-00003-160241**

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 M. O. Rowe, for payment for all time and benefits lost and his record cleared of any reference to this matter, 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 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. 2015-183730. General Chairman’s File No. MOR-INSV. BRS File Case No. 15361-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.

The Claimant is a Signalman in Carrier's Signal Department, having entered Carrier's service on March 17, 1998. On October 14, 2014, Foreman Kanouse instructed the Claimants to have a Carrier vehicle serviced. The Claimants Hicks, Erler, and Rowe left to have the truck repaired. They waited five hours while the truck repairs were completed. Hicks stated that during this time they walked south away from the shop and he quizzed the others on Signal Construction and Operating Rules until the repairs were completed. Phone records show that the Claimants attempted to call Manager Martin seven times but did not reach him. The Claimants did not return to work that day. The Claimant and the others were charged with failure "to return to work at Queensgate Yard immediately after dropping the truck off and did not return the remainder of the day. Additionally, you falsified payroll for October 14, 2014 when you claimed pay for time not worked."

On October 15, 2014, the Claimant brought his personal car to the worksite. The Claimant said that he was working on that day as a make-up day for an upcoming holiday. Supervisor Broadway stated that when he checked on the team and did not see the Claimant for a second time, the Claimant's team was unable to say where he was. The Claimant testified that he left the worksite because he soiled himself due to not feeling well and he was too embarrassed to tell anyone about the incident, so he left. The Claimant drove four hours back to his home.

An Investigation was held on December 8, 2014, which addressed all three Claimants' conduct on October 14, 2014. The Claimant Rowe was also charged with leaving work early without authority on October 15, 2014. Afterward, the Claimant Rowe was found guilty of violating CSX Transportation Operating Rules 104.1, 104.3, and 104.6 and was assessed a 20 calendar day actual suspension.

"CSX Transportation Operating Rules 104.1, 104.3, and 104.6 provide:
104.1: Employees must know and comply with rules, instructions, and procedures that govern their duties. They must also comply with the instructions of supervisors. When there is uncertainty, employees must:
1. Take the safe course, and
2. Contact a supervisor for clarification.

104.3: The following behaviors are prohibited while on duty, on CSX property, or when occupying facilities provided by CSX:
(d) Carelessness, incompetence, or willful neglect of duties

104.6: Employees must report for work at the designated time and place. Employees unable to work or who want time off must make the request:
1. To the proper authority, and
2. sufficiently in advance to allow the vacancy to be filled. ”

The Carrier contends that the Claimant was afforded a fair and impartial hearing. The Carrier contends that it produced substantial evidence that the Claimant violated CSXT Operating Rules 104.1, 104.3, and 104.6. The Carrier contends that on October 14, 2014, the Claimant left the yard shortly after arriving and did not return for the remainder of the day. The Carrier contends that the Claimant has failed to satisfactorily explain his failure to return to work, or what he was doing while away from his assigned duties. The Carrier contends that the Claimants failed to contact a supervisor to arrange to return to the work site, or for clarification regarding the repair. The Carrier contends that the Claimant disappeared from the worksite on October 15, 2014, without requesting permission to leave, and failed to contact his supervisor to advise him of his whereabouts or to explain his absence. The Carrier contends that the Claimant was compensated for both days, despite failing to perform his assigned duties. The Carrier contends that the penalty is justified and conforms with the Carrier’s policy.

The Organization contends that the Carrier has failed to provide substantial evidence showing that the Claimant is guilty of the charges against him. The Organization contends that on October 14, 2014, the Claimant was following the instructions of the Foreman when he and the other Claimants took the truck into the shop for repairs. The Organization contends that the Claimants devoted themselves exclusively to the service of CSX while waiting for the repairs to be finished. The Organization contends that on October 15, 2014, the Claimant was embarrassed by having soiled himself and it would have been unsafe for him to stay. The Organization contends that the Claimant was charged under the wrong rule. The Organization contends that the Claimant was denied due process and a fair and impartial hearing. Finally, the Organization contends that the Carrier’s imposition of a 20 calendar day actual suspension was punitive, harsh, and excessive, especially as the Claimant Erler only received a five calendar day suspension.

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 Claimants admit that on October 14, 2014, they left the worksite with a Carrier vehicle with the intention of getting it repaired and did not return to the yard that work day. The Carrier says that their explanation of what they did in the intervening hours is not plausible, nor does it justify compensation from the Carrier, as they were not performing duties in an efficient manner. Even accepting the Claimants at their word, the Board is unable to see how the Claimant could have reasonably concluded that his duty was to walk for five hours without contacting any supervisor. While attempts were made to contact one manager, there is no evidence that clarification from any other supervisor was sought. The Claimant admits that on October 15, 2014, he left the worksite before the end of the day without seeking permission or contacting a supervisor afterward. While the Board can understand the Claimant's mortification over having soiled himself, it cannot condone his complete failure to communicate with supervision.

The Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. We find the record in this matter to contain substantial evidence in support of the Carrier's determination that the Claimant violated CSX Transportation Operating Rules. Moreover, nothing in the record shows the Carrier's disciplinary decision to have been arbitrary, harsh, or otherwise unreasonable. Accordingly, we must deny the claim. Although the Claimant's suspension was longer, his misconduct was more serious.

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.