

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42962  
Docket No. SG-43633  
18-3-NRAB-00003-160399**

**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 Louisville & Nashville):**

**Claim on behalf of K. L. Brooks, for compensation for all lost time, the overhead suspension and any other mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, when it issued the Claimant the harsh and excessive discipline of a 15-day actual suspension and a 5-day overhead suspension without providing him a fair and impartial Investigation, and without meeting its burden of proving the charges in connection with an Investigation held on January 7, 2015. Carrier’s File No. 285478. General Chairman’s File No. 14-208-13D. BRS File Case No. 15438-L&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.**

**The Claimant entered Carrier's service on September 4, 1990. At the time of the discipline, the Claimant was assigned to the position of Independent Signal Foreman in the Carrier's Signal Department.**

**The Claimant received a Notice of Investigation dated December 23, 2014:**

**"The purpose of this formal Investigation is to determine the facts and place your responsibility, if any, in connection with GPS information received December 15, 2014, that starting on October 13, 2014 and continuing through December 11, 2014 you falsified payroll and the claimed pay for time not worked on numerous days.**

**In connection with the above incident, you are charged with failure to properly and safely perform the responsibilities of your position, absenteeism, dishonesty, falsification of payroll, and possible violations of, but not limited to, CSXT Operating Rules 100.1, 104.1, 104.2, 104.3, and 104.6."**

**An Investigation was held on January 7, 2015, after which the Carrier notified the Claimant that it had determined that "sufficient proof exists to demonstrate that between October 13, 2014 and December 11, 2014, you violated CSX Transportation Operating Rule 100.1." The hearing officer assessed discipline in the form of a 15 day actual suspension and a 5 day overhead suspension.**

**"Operating Rule 100.1 states:**

**Employees must know and comply with the 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 safest course of action, and (2) contact a supervisor for clarification."**

**There is no dispute that the Claimant's regular work days were Monday through Thursday, and that he claimed overtime pay on certain Fridays between October 13, 2014, and December 11, 2014. The Claimant testified that for the three years he has held his position, his previous supervisor instructed him to work on his days off. The Claimant conceded that his current supervisor did not instruct him to**

work overtime on Fridays. General Supervisor Keene stated that it was possible that he had instructed participants at a certification meeting to utilize the Claimant anytime they needed assistance.

The Carrier contends that the Claimant took advantage of an alleged pre-existing arrangement with his previous supervisor to claim overtime hours on Fridays and incorrectly allocate all his overtime hours to one AFE project, despite not spending the entire time on that project. The Carrier contends that an employee must obtain authorization before working overtime on a scheduled day off and must correctly code those hours. The Carrier contends that the Claimant made no attempt to seek clarification from his current supervisor, in violation of Operating Rule 100.1. The Carrier contends that the level of discipline is appropriate, as it is within the parameters of the Carrier's Individual Development and Personal Accountability Policy ("IDPAP").

The Organization contends that the Carrier violated Rule 55 when it failed to charge the Claimant within ten days of first discovery, as the Carrier reviewed the Claimant's payroll records between October and December 11, 2014, but did not charge him until December 23, 2014, 12 days later. The Organization contends that the Claimant's previous supervisor allowed him to perform his Foreman's duties on his rest days and to allocate all of his overtime to AFE projects regardless of whether he spent the entire day working on that project, and that he was unaware that he should not continue the practice. The Organization contends that the Carrier recognized that the Claimant did nothing wrong when it dropped all but one of the charges against him. The Organization contends that the Claimant's supervisor admitted that he was aware that Claimant was working overtime on some rest days, and approved it. The Organization contends that Claimant is a 25-year employee with a clean record and that the discipline issued was harsh and excessive.

The Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

The Board finds that the Carrier has provided sufficient evidence that the Claimant claimed overtime pay for hours worked on Fridays, without prior permission from his current supervisor, but the record demonstrates that the Claimant did perform actual work for the Carrier during the claimed hours. Nonetheless, the Carrier has met its burden of proving a violation of CSXT Operating 100.1, as the Claimant should have clarified the procedure with his new supervisor

before claiming overtime pay for overtime hours while on his rest days. However, in light of the Claimant's prior three-year practice of responding to calls while on rest days and vacation and his previous supervisor's instruction to do so, the Carrier has not proved that the Claimant had an intent to deceive or defraud the Carrier.

Given the Claimant's very long service record without previous discipline, the 15 day actual suspension and five day overhead suspension was excessive under all of the circumstances of this case. The Claimant may have benefitted from an opportunity to correct his conduct. In light of this, the Board finds that it is appropriate to reduce the discipline for a Serious Offense to a Time Out under the Carrier's IDPAP for Signal Employees.

**AWARD**

Claim sustained in accordance with the Findings.

**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.