

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42963
Docket No. SG-43704
18-3-NRAB-00003-160495**

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 H.C. Smith, for return to his former position with all qualifications restored, compensation for all time lost including the difference in compensation for all hours worked, including holiday pay, vacation pay, and any other compensated time, between his Foreman’s position and that of the position he is demoted to, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50, when it issued the harsh and excessive discipline of a 15-day actual suspension and a 15-day record suspension, with a review period of 6 months, and disqualification from holding a Signal Foreman or Lead position for a period of two years, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on May 5, 2015. Carrier’s File No. 2015-190839. General Chairman’s File No. HCS-INV. BRS File Case No. 15450-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 entered Carrier's service on May 29, 1979. At the time of the discipline, the Claimant was a Signal Foreman in the Carrier's Signal Department.

The Claimant received a Notice of Investigation dated April 27, 2015:

"The purpose of this formal Investigation is to determine the facts and place your responsibility, if any, in connection with an incident that occurred in the vicinity of Toledo Subdivision, when upon review of your Construction Notes on April 1, 2015, it was discovered that on March 24, 2015, you failed to keep accurate records of actual work performed. You had worked on 2 crossings (Gem Road, New Palestine, Indiana and Cross Creek Road in Tontogany, Ohio) and charged your time to only one (1) crossing, completing only one construction note for the day, when you had worked a half day at each crossing. Additionally, you charged the State of Ohio for working all day at Tontogany, when only there five hours. Your construction notes for Tontogany indicated that you had worked at both crossings that day. Additionally, you also inputted inaccurate payroll time for the work on state projects, for your entire team, for the payroll periods ending February 20, 2015, February 27, 2015, March 6, 2015, March 13, 2015 and March 27, 2015, which required payroll corrections to ensure proper charges for State projects."

After the May 5, 2015, Investigation, the Carrier concluded, "Substantial evidence was revealed in the hearing demonstrating that you violated the rules as charged, and as such, you are guilty of violating CSX Transportation Operating Rules 100.1 and 104.3 and Signal Rules and Instructions (SR & I) 1.201." The discipline assessed was a 15 calendar day actual suspension, plus a 15 calendar day overhead

suspension. In addition, the Claimant was disqualified from holding any Foreman or Lead position for two years.

In February and March 2015, the Claimant incorrectly entered construction notes for the projects that he and his team were working on. On March 24, 2015, the Claimant's construction notes did not accurately reflect work performed in New Palestine, Indiana, when the team stopped on its way to another site. On other dates, the payroll reports do not match the construction notes entered by the Claimant. Payroll changes were made when the discrepancies were discovered. The Claimant testified that the notes were entered in accord with numbers provided to him. There is no evidence that any incorrect payments were made as a result of the Claimant's errors.

The Carrier contends that it has produced substantial evidence that the Claimant did not comply with rules and instructions by accurately reporting and completing payroll and construction notes as required, was careless in reporting his payroll and construction notes, and his work was not in accordance with Company standards and practices. The Carrier contends that the penalty assessed was warranted, and was permitted within the parameters of the Carrier's Individual Development and Personal Accountability Policy ("IDPAP") for Signal Employees, as it was less than the permissible penalty for this violation. Further, the Carrier contends that it appropriately temporarily barred the Claimant from serving again as a Lead or Foreman.

The Organization contends that the Carrier has failed to meet its burden of proof. The Organization contends that the Claimant's gang did not perform work on March 24, 2015, at New Palestine, Indiana, as it merely dropped off a reel of pipe on its way to the work site. The task was de minimis and should not have been recorded as work. The Organization contends that the Claimant inputted time and construction notes that were approved by his supervising officer, used numbers that were provided to him by the Carrier, and complied with instructions. The Organization contends that the Claimant is, at most, guilty of a clerical error. The Organization contends that the Claimant was denied a fair and impartial hearing, as the hearing officer prejudged the Claimant's guilt and failed to properly sequester witnesses. The Organization contends that the discipline was harsh, excessive, and punitive.

The transcript has been carefully reviewed and the Board finds that the Claimant was afforded a full, fair and impartial hearing. The request to sequester witnesses was granted and was not made ineffectual by the hearing officer's questioning of witnesses. Furthermore, we find no evidence that the hearing officer pre-judged the Claimant's guilt so as to deprive him of a fair and impartial hearing.

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.

We find the record in this matter to contain substantial evidence in support of the Carrier's determination that the Claimant incorrectly entered construction notes on multiple occasions, in violation of the rules he is charged under. 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.

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.