

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42964
Docket No. SG-43707
18-3-NRAB-0000-160526**

The Third Division consisted of the regular members and in addition Referee when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of the 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 C&O, Chesapeake District):

Claim on behalf of J.R. Stamper, for compensation for all time lost, including overtime, and for 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 a five-day actual suspension, and a ten-day overhead suspension, with a six month review period 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 May 12, 2015. Carrier’s File No. 288307. General Chairman’s File No. 15-63-CD. BRS File Case No. 15463-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.

The Claimant entered the Carrier's service on November 28, 2006. At the time of the discipline, the Claimant was a maintainer in the Carrier's Signal Department.

On April 9, 2015, the Claimant was served notice of an Investigation of this 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 1330 hours, on April 1, 2015, in the vicinity of 5th Avenue and WV 20, Hinton, West Virginia, while you were driving CSX Boom Truck (N6357D), and making a left hand turn onto WV-20, you failed to ensure you had proper clearance and struck a parked OSP vehicle with signal mask loaded on the CSX Trailer (R1654D) you were towing.

In connection with the above incident, you are charged with failure to properly and safely perform the responsibilities of your position, not assisting in the safe operation of vehicle, and possible violations of, but not limited to, CSXT Operating Rules 100.1 and 104.1; as well as, CSX Safeway Rule GS-4."

After a formal Investigation on May 12, 2015, the Carrier imposed a five calendar day actual suspension, and a ten calendar day overhead suspension for a period of six months after finding the Claimant guilty of violation of CSX Transportation Operating Rules 100.1 and 104.1 and CSX Safeway Rule GS-1.

The Carrier contends that it produced substantial evidence that while traveling with a passenger, the Claimant struck a parked OSP vehicle, causing more than \$2,000 in damages. The Carrier contends that, notwithstanding the Claimant's self-serving denials, the Claimant failed to take the safest course of action which resulted in an at-fault vehicle accident. The Carrier contends that the discipline that was meted was within the parameters of its Individual Development and Personal Accountability

Policy (“IDPAP”) for Signal Employees for violation of CSXT Operating Rules 100.1 and 104.1, and CSX Safeway Rule GS-4.

The Organization contends that the Claimant was deprived of a full and impartial Investigation by the Hearing Officer’s conduct. The Organization contends that the elicited testimony failed to substantiate the Carrier’s charges and was based on assumptions rather than facts. The Organization contends that the crux of the Carrier’s case is that accidents cannot happen without a rule violation. The Organization contends that the Claimant took the safest route possible, with the addition of an employee following for assistance in maneuvering. The Organization contends that the accident was the result of a misjudgment, not a willful disregard for safety.

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

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 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 failure to properly and safely perform the responsibilities of his position, resulting in an at-fault vehicle accident. The Claimant admitted that he was operating the vehicle when the accident occurred, and the evidence is sufficient to demonstrate that he failed to take the safest course of action and that his actions constituted a violation of CSXT OR 100.1 and 104.1, and CSX Safeway Rule GS-4.

The Claimant was issued a five-day actual suspension, and a ten-day overhead suspension, with a six-month review period. The Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously, when it issued the discipline to the Claimant. Therefore, the claim is 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.