

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43030
Docket No. SG-43971
18-3-NRAB-00003-170003**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link, Inc.:

Claim on behalf of K.J. Thomas, for reinstatement to service with compensation for all time lost, including overtime and skill pay, with all rights and benefits unimpaired and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Article 13, when it issued the harsh and excessive discipline of dismissal against the Claimant, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on April 22, 2015. General Chairman’s File No. 16-004-MRL-87. BRS File Case No. 15480-MRL.”

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 facts in this case are largely undisputed. At all times relevant to this dispute, the Claimant was employed as a Signaller in the Carrier's Signal Department. On April 8, 2015 the Claimant was assigned to perform flagging protection for contractors working at Laurel, Montana. After completing his assignment, the Claimant drove home in the Company vehicle he had been using, arriving at his home at approximately 10:00 pm. The Claimant kept the vehicle at his residence until April 15, when he was requested to return it by Supervisor Stan Boaz.

By letter dated April 16, 2015, the Claimant was directed to attend a fact-finding session at which he was charged with taking the "van home after specific instructions from Supervisor of Signal Stan Boaz that you were not allowed to take the company vehicle home." The notice further advised the Claimant that he was being held out of service pending the results of the fact-finding. Following the fact-finding, which was conducted on April 22, 2015, the Claimant was dismissed from service effective May 11, 2015.

Based upon the record before us, the Board concludes the instructions in effect at the time of this incident prohibited employees, with certain exceptions, from taking Company vehicles home. The Claimant was not one of the employees permitted to take a vehicle home, and acknowledged this fact at the fact-finding. His doing so, and keeping the vehicle at his residence for a week, was a violation of the Carrier's instructions, especially since he did not notify his supervisor that he had the vehicle. We find, therefore, that the Carrier had substantial evidence to support its charge against the Claimant, and that he was properly subject to discipline.

The Organization argues there are mitigating circumstances in this case. It explains that the Claimant drove home on April 8 because he had worked for fifteen hours and deemed it safer to drive home. It states he intended to return the vehicle the following day, but had to put down the family dog. Because of that, the Organization says returning the vehicle was not on the Claimant's mind. It concludes, therefore, that the discipline imposed was harsh and excessive.

The Claimant's disciplinary record reflects he was dismissed in December 2014 for insubordinate, discourteous and profane behavior toward a supervisor. The Carrier reinstated him on a leniency basis the following month. In accepting the leniency reinstatement, the Claimant agreed to a two-year probationary period,

during which he was to adhere to various conditions, including that he “must comply with all directives from Signal and Communications Supervisors, written or verbal.” The incident in this case arose only four months following the Claimant’s reinstatement. In view of the probationary conditions, it is the Board’s conclusion that the discipline imposed was neither arbitrary nor excessive. The Agreement was not violated.

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 29th day of March 2018.