

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43055  
Docket No. SG-43938  
18-3-NRAB-00003-160665**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Canadian Pacific (formerly Soo Line)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific (formerly Soo Line):**

**Claim on behalf of C.B. Weishaar, for payment for all time lost, including overtime, any loss of benefits he has suffered, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 32, when it assessed the harsh and excessive discipline of a 30-day actual suspension to 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 March 9, 2015. Carrier also committed a time limits violation when it failed to respond to the Organization’s appeal within the 60-day time limit. Carrier’s File No. 9-00155. General Chairman’s File No. Weishaar. BRS File Case No. 15465-SOO.”**

**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.

At the time the Claimant was assessed the discipline of a 30-day actual suspension, his regular job assignment as Signal Maintainer out of Sturtevant, Wisconsin was working on Milepost 32 through Milepost 53, C&M Subdivision, with work days Tuesday through Saturday, shift hours 6:30 am to 3:00 pm, with Sunday and Monday as rest days. It is undisputed that the Claimant missed reporting to duty on his scheduled Saturday shift on February 28, 2015 and that he called in to report his absence after the start of his shift in and around 9:10 am due to illness. Carrier cited the Claimant for Formal Investigation asserting that in not making timely notification of his absence from work, a significant train delay resulted in his territory. Additionally, Carrier discerned from an analysis of his personal work record that the Claimant had established a pattern of absences from work and had been progressively disciplined accordingly and that the 30-day actual suspension addressing his absence from work on February 28, 2015 was the next step of progressive discipline to be administered.

Formal Investigation was held on Monday, March 9, 2015 and by letter dated March 18, 2015 signed by Cindy Ingram, Director S&C Maintenance-South, the Claimant was informed that predicated on testimony presented at the Investigation/hearing, he was found to be in violation of General Code of Operating Rules (GCOR) 1.15 Duty – Reporting Absence pertaining to his not reporting for duty on Saturday, February 28, 2015 resulting in a significant train delay occurring in his territory. Rule 1.15 reads as follows:

**“Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal (emphasis the Carrier).”**

The Organization filed the instant claim asserting that in assessing the Claimant the discipline of a 30-day suspension, Carrier was in violation of Rule 32 – Discipline and the Investigation clause of the January 1, 1986 Controlling Agreement, in particular Section ( i ) which reads in whole as follows:

**“If it is found that an employee has been unjustly disciplined or dismissed, such discipline will be set aside and removed from the record. The employee shall be reinstated with all rights unimpaired including wage loss, if any, suffered by him resulting from such discipline or dismissal, less any amount earned in other employment during such period the disciplinary action was in effect.”**

The record evidence reflects the Organization filed this claim with Director Cindy Ingram and sent the written claim by U. S. Postal Certified Mail, Return Receipt. The Return Receipt shows Carrier acknowledged having received the claim on May 14, 2015, the receipt signed by a Dottie Steinbeck. According to Cindy Ingram she was not at work in and around this period of time due to being on a leave of absence. By letter dated July 27, 2015 from Soo Line General Chairman, K.D. Huebner to Cindy Ingram, the Organization informed Ingram it had yet to receive a response from Carrier to the claim it filed dated May 11, 2015 on behalf of the Claimant received by Carrier on May 14, 2015, within the sixty day time limit set forth in Rule 31 – Claims or Grievances of the Controlling Agreement between the Parties. Rule 31 reads in whole as follows:

**“All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances (emphasis the Organization).”**

General Chairman Huebner concluded this letter by requesting Ingram to advise when Carrier would pay the claim.

It is noted by the Board that if the sixty (60) day time limit is tolled from the claim date of May 11, 2015, Carrier had exceeded the limit by seven (7) days from the Organization’s letter to Ingram dated July 27, 2015. If the time limit is tolled from May 14, 2015, the date Carrier received the claim via Certified Mail Return Receipt

Carrier still exceeded the time limit of sixty (60) days by four (4) days. The Board has noted all excuses raised by Carrier explaining the reason for not providing a timely response to the claim pursuant to its obligation to do so as set forth in Rule 31 and rejects said excuses finding each to be meritless.

Accordingly, we rule to sustain the claim in its entirety and order Carrier to comply with the requested remedy. In so ruling, it is of course unnecessary to address the claim on the merits.

**AWARD**

**Claim sustained.**

**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 2nd day of May 2018.**