

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43267  
Docket No. SG-42842  
18-3-NRAB-00003-150025**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Delaware & Hudson Railroad**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific (formerly Delaware and Hudson):**

**Claim on behalf of M.W. Andrews, for compensation for all time and benefits lost, and any mention of this matter removed from his record, account Carrier violated the current Signalmen’s Agreement, particularly Article 12, when it withheld the Claimant from service without pay pending unwarranted Federal DOT drug test results in addition to issuing him the harsh and excessive discipline of a five-day 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 March 11, 2013. Carrier’s File No. Mark Andrews. General Chairman’s File No. JW-75-27-13. BRS File Case No. 15100-D&H.”**

**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.

By notice dated March 5, 2013, the Claimant was directed to attend a formal Investigation on charges that the Claimant allegedly violated Carrier rules in connection with a February 27, 2013, incident in which the Claimant allegedly backed a Carrier vehicle into a bollard, causing damage to the vehicle. The Investigation was conducted, as scheduled, on March 11, 2013. By letter dated March 28, 2013, the Claimant was informed that as a result of the Investigation, he had been found guilty as charged, and that he was being assessed a five-day suspension. The Organization thereafter filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him, as well as the Carrier's decision to withhold the Claimant from service following this incident, pending the results of a DOT drug test. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant received a fair and impartial Investigation, because substantial evidence in the record proves the Claimant to be guilty as charged, and because the discipline imposed was fair, reasonable, and fully warranted. The Organization contends that the instant claim should be sustained in its entirety because the Carrier improperly withheld the Claimant from service for two days pending the results of a drug and alcohol test, because the drug and alcohol test should not have been performed under the Carrier's policy and federal regulations, because the Carrier failed to provide the Claimant a fair and impartial Investigation, because the Carrier failed to meet its burden of proof, and because the total seven-day suspension imposed was harsh and excessive.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was guaranteed all of his due process rights throughout the proceeding.

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 violating Carrier Rules 1.1, 1.1.1, and 2.13 when he was admittedly involved in an accident where he backed into and contacted a bollard. The bollard was a stationary object and the Claimant clearly did not operate safely.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

In addition to the five-day suspension that was issued to the Claimant, the Claimant missed two other days of work because he was held out of service pending a drug and alcohol test. Consequently, the Claimant wound up losing seven days of pay as a result of this accident. The Claimant should not have been held out of service that long, and the Board must find that the Carrier acted unreasonably and arbitrarily when it issued what amounted to a seven-day disciplinary suspension to the Claimant. Therefore, we order that the Claimant's discipline be reduced to a three and one-half day suspension and the Claimant be made whole for the additional three and one-half days that he lost as a result of the Carrier's actions in this case.

The claim is sustained in part and denied in part. The Claimant shall be reimbursed for three and one-half days of pay, which constitutes one-half of his time lost. The five-day suspension issued to the Claimant shall be reduced to a three and one-half day suspension.

### **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 26th day of June 2018.