

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43268  
Docket No. SG-42910  
18-3-NRAB-00003-150110**

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: (  
(Soo Line Railroad Company**

**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 B.M. Krause and R.J. Mikkelsen, for compensation for all lost wages, with all rights and benefits unimpaired, and any mention of this matter removed from their personal records, account Carrier violated the current Signalmen’s Agreement, particularly Rule 32 and the Preamble of the Agreement, when it issued the Claimants the harsh and excessive discipline of a 10-day actual suspension in addition to the time it had already withheld them from service pending Investigation, without having provided them a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on May 29, 2013. Carrier’s File No. 9-00139. General Chairman’s File No. 9-25-13 Krause Mikkelsen Discipline. BRS File Case No. 15061-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.

By notice dated May 22, 2013, the Claimants were directed to attend a formal Investigation on charges that the Claimants allegedly violated Carrier rules in connection with a May 15-16, 2013, incident in which the Claimants allegedly were involved in an accident while operating a Carrier vehicle and then failed to promptly notify their supervisor of the accident. The Investigation was conducted, after a postponement, on May 29, 2013. By letter dated June 5, 2013, the Claimants were informed that as a result of the Investigation, they had been found guilty as charged, and that they each were being assessed a ten-day actual suspension. The Organization thereafter filed the instant claim on behalf of the Claimants, challenging the Carrier's decision to discipline them, as well as the Carrier's decision to withhold the Claimants from service pending the Investigation. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimants were afforded a fair and impartial Investigation, because substantial evidence in the record proves the Claimants to be guilty as charged, and because the discipline imposed was fully justified. The Organization contends that the instant claim should be sustained in its entirety because the Carrier committed a fatal procedural error, because the Carrier improperly withheld the Claimants from service pending the Investigation, because the Carrier failed to provide the Claimants a fair and impartial Investigation, because another employee was required to report the accident, because the Carrier ignored the mitigating circumstances, because the Carrier ignored the principle that discipline should be corrective instead of punitive in nature, and because the discipline 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 Claimants were guaranteed all of their due process rights throughout the proceeding.

The Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimants were guilty of violating any Carrier rules relating to the accident that took place on May 15, 2013. There is simply insufficient proof that the Claimants had any knowledge of the accident for which they were disciplined for failing to report.

It is fundamental that the Carrier bears the burden of proof in all disciplinary cases. In this case, the Carrier has simply failed to meet its burden of proof. Therefore, the Board has no choice but to sustain the claim.

**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 26th day of June 2018.