

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43269
Docket No. SG-43203
18-3-NRAB-00003-150403**

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 K.R. Perkins, for reinstatement to service with compensation for all time lost, including overtime, 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 Rule 32, when it issued the harsh and excessive discipline of dismissal 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, 2014. Carrier’s File No. 9-00141. General Chairman’s File No. Perkins. BRS File Case No. 15143-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 5, 2014, the Claimant was directed to attend a formal Investigation on charges that the Claimant allegedly violated Carrier rules by being absent from duty without proper authority, by misusing Carrier property, and by being dishonest with a Carrier officer on April 21, 23, and 25, 2014. The Investigation was conducted, as scheduled, on May 12, 2014. By letter dated May 29, 2014, the Claimant was informed that as a result of the Investigation, he had been found guilty as charged, and that he was being dismissed from the Carrier's service. The Organization thereafter filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant was afforded a fair and impartial Investigation, because substantial evidence in the record proves the Claimant to be guilty as charged, because there is no merit to the Organization's position, and because the discipline imposed was fully justified. The Organization contends that the instant claim should be sustained in its entirety 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 discipline imposed was harsh, excessive, and does not fit the alleged offense.

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 being absent from duty without authority, as well as misuse of railroad property and dishonesty to a Carrier officer in violation of several Carrier rules. The Claimant admitted that he failed to notify his supervisor that he

was leaving the worksite, even though he had an obligation to notify the supervisor that he was exiting Carrier property. Moreover, the Claimant's GPS made it clear that he lied about where he had been during his lunch period.

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.

The Claimant in this case was terminated for extending his lunch period on multiple occasions and leaving work locations without proper notice. Moreover, he was clearly proven guilty of being untruthful. Given those serious offenses, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant for his wrongdoing in this case. Therefore, this claim must be 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 26th day of June 2018.