

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 43270  
Docket No. SG-43204  
18-3-NRAB-00003-150404

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 C.B. Weishaar, for compensation for all lost time, including overtime and any loss of benefits that he has suffered, account Carrier violated the current Signalmen’s Agreement, particularly Rule 32, when it issued the Claimant 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 12, 2014. Carrier’s File No. 9-00142. General Chairman’s File No. Weishaar. BRS File Case No. 15141-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 February 7, 2014, the Claimant was directed to attend a formal Investigation on charges that the Claimant allegedly violated Carrier rules in connection with a February 3, 2014, incident in which the Claimant allegedly refused to take trouble calls, resulting in response time delays. The Investigation was conducted, after a postponement, on March 12, 2014. By letter dated April 1, 2014, 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 actual suspension. 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 justified based on the seriousness of the offense. 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, because the Carrier engaged in harassing conduct against the Claimant, because the Carrier failed to consider mitigating circumstances, 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 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 the Carrier has failed to meet its burden of proof that the Claimant was guilty of any rule violations justifying the issuance of discipline to him. Although the Claimant admitted that he failed to take the call, he stated that he had been sick and simply did not hear the call. The Claimant was unaware that the Carrier was**

attempting to contact him on the date in question. There was no intent on the Claimant's part to not heed the call.

It is fundamental that the Carrier bears the burden of proof in all discipline cases. In this case, the Carrier simply failed to meet that burden. Consequently, the Board has no choice other than 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.