

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43273
Docket No. SG-43207
18-3-NRAB-00003-150407**

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 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 him the harsh and excessive discipline of a 10-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. 9-00143. General Chairman’s File No. Weishaar Failure to Obtain Permission. BRS File Case No. 15155-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 14, 2014, the Claimant was directed to attend a formal Investigation on charges that the Claimant allegedly violated Carrier rules by allegedly booking off for Rest Leave without permission from his manager on February 8-9, 2014. 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 ten-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, 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 cited rules do not support the charges, because there is no support for the Carrier's position, 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 there is sufficient evidence in the record to support the finding that the Claimant acted in violation of Rule 1.13 when he only booked off using the Carrier's IVR System but then failed to follow the directive from his immediate manager and place a telephone call or some other form of direct communication to the manager advising him that that he was not going to be available on the date in question. The Claimant did comply with the IVR rule; but since he received the other directive from his supervisor, he also had the responsibility of following that order.

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 record reveals that the Claimant was assessed a ten-day working suspension for the violation here. Given the confusion between notification and getting permission and also the confusion of the IVR system plus making a personal telephone call, the Board finds that that ten-day suspension was excessive and there was no just cause to support it. Consequently, we hereby reduce the discipline to a five-day suspension and we order that the Claimant be made whole for the additional five days.

The claim is sustained in part and denied in part. The ten-day suspension of the Claimant is reduced to a five-day suspension, and he shall be made whole for the additional five days.

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.