

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43275  
Docket No. SG-43233  
18-3-NRAB-00003-150287**

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 D.C. Johnson, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time lost, including overtime, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 27 and 32, when it terminated his employment and extinguished his seniority on December 2, 2013, without just cause, and subsequently upheld that decision following a hearing conducted on January 14, 2014. Carrier’s File No. 9-00140. General Chairman’s File No. 3-24-14. BRS File Case No. 15132-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 December 2, 2013, the Claimant was advised that his seniority and employment with the Carrier had been terminated in accordance with Rule 27(e) on grounds that the Claimant had failed to report for duty on November 25, November 26, November 27, and December 2, 2013, without contacting the Carrier during that time period. At the Claimant's request, an Investigation was conducted on January 14, 2014. By letter dated January 30, 2014, the Claimant was informed that as a result of the Investigation, the Carrier had determined to uphold the Claimant's dismissal. 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's inaction warranted the decision to dismiss him in December 2013, because the Claimant failed to protect his assignment for a period of eight calendar days, because the Claimant requested and was afforded a fair and impartial Investigation, because substantial evidence justifies the Carrier's decision to apply and uphold the self-executing provisions of Rule 27(e), because the Claimant did not advise his foreman or any other member of management that he would not be available to protect his assignment, because the Claimant did not request a leave of absence or obtain any other authorization to be absent from his assignment, and because the discipline imposed was fully justified. The Organization contends that the instant claim should be sustained in its entirety because Rule 27(e) does not apply to this matter, because the Carrier should have applied Rule 27(i) to this matter, because the Claimant contacted his immediate superior about his vehicle situation, because the Carrier ignored the mitigating circumstances, because there is no support for the Carrier's position, 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 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 27(e) when he failed to come to work over eight

days, November 25, 26, 27, 28, 29, 30, as well as December 1 and 2. Rule 27(e) states the following:

**“The seniority and employment of an employee who is absent from duty without proper authority may be terminated, provided such employee is so notified in writing at his last known address by Registered or Certified Mail, Return Receipt Requested, with copy to the General Chairman, advising that his seniority and employment have been terminated due to his absence without proper authority . . .”**

The Claimant did inform the Carrier on certain days that he would be coming to work and did not show, and on other days he just did not show up for work. Consequently, the Claimant was technically in violation of Rule 27(e).

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 some of the days at issue here were holidays and days that the Claimant was not even scheduled to work. Given those mitigating factors, the Board finds that the Carrier acted unreasonably and arbitrarily when it terminated the Claimant’s employment. Consequently, we order that the Claimant be reinstated to employment but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension for his technical violation of the rules.

The claim is sustained in part and denied in part. The Claimant shall be reinstated to employment but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.

### **AWARD**

**Claim sustained in accordance with the Findings.**

**Form 1**  
**Page 4**

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**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.**