

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43317
Docket No. SG-44079
19-3-NRAB-00003-170148**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Kansas City Southern Railway Company (former
(MidSouth Rail Corporation)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern (formerly Midsouth Rail Corp.):

Claim on behalf of T.J. Asher, for compensation for all time lost, including overtime and skill pay, 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 Rules 22 and 35, when it issued the harsh and excessive discipline of a 5-day actual suspension and a 25-day record suspension against the Claimant, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on June 7, 2016. Carrier’s File No. K0616-6842. General Chairman’s File No. 16-116-MSR-185. BRS File Case No. 15600-Midsouth.”

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.

After hearing held June 7, 2016 and by letter dated June 15, 2016, the Claimant – an employee in the Carrier’s service since 1999 – was issued a 30-day suspension (5 actual, 25 record) for refusing a call from the Critical Incident Desk (“CID”) to go to East Jackson and East Whitfield when a signal would not clear on May 7, 2016.

On May 7, 2016, the Claimant was working as a Signal Maintainer and received a trouble call from the CID for territory he was covering and did not respond to that call.

The conversations involving the Claimant and personnel at CID were recorded and introduced at the hearing. Carrier Hearing Exhibits 4-6.

The Claimant was covering for another Maintainer who was off. Tr. 10. At 5:12 P.M. the Claimant received a call from J. Dastrup at CID advising the Claimant that “I’ve got East Whitfield ... not lining normal ... the signal won’t clear down the main ... [t]hat’s what the problem is going westbound.” Tr. 9, 13. The Claimant inquired whether the problem might be with a bulb and suggested a solution of lining both the eastbound and westbound with Dastrup responding “I’ll asked him if he can’t do that ... I’ll see if we can’t give it a try.”

Tr. 13-15. See also, Carrier Hearing Exhibit 4.

At 5:38 P.M., the Claimant called CID and spoke with Dastrup asking “[w]as he able to try it?” and Dastrup responded “... he was saying that he can’t get East Jackson to line from Main 1 to Main 2 so they’ve got nothing but problems out there.” Tr. 16. The Claimant responded “Well, I’m out at the store so if you want somebody that’s going to get there quicker, I guess you need to call somebody closer ... [b]ecause it’d be at least an hour before I get back to the house and even go that way.” Id. Dastrup responded “Well, I’ll see – I’ll see what we can do” and the Claimant answered “Let me know.” Id. See also, Carrier Hearing Exhibit 5.

At 11:07 P.M., the Claimant again called CID and this time spoke with C. Williams. Tr. 19, 27. Williams asked the Claimant if he was getting close to the location of the trouble call and the Claimant responded “I ain’t left yet ... [Dastrup] never called me back ... I told him I was in the store and it’d be an hour before I could leave or go anywhere; call somebody else that was closer ... [a]nd he said all right ... [a]nd I said. ‘Well, let me know.’” Tr. 19. The Claimant then told Williams “... I never heard from him so I figured he had called somebody else.” Id. Williams respond “[n]o” and the Claimant stated “Well, I ain’t getting closer.” Id. The Claimant then stated “I guess you can call somebody because I’m not driving up there now ... I was just putting my mask on to go to sleep.” Tr. 20. Williams then stated “I’ll see what I can do.” Id. See also, Carrier Hearing Exhibit 6.

Another Maintainer was sent to the location at 11:45 P.M. Tr. 18.

Giving the Claimant the benefit of the doubt that there may have been a misunderstanding between the Claimant and Dastrup in the first two conversations over whether the Claimant had to respond to the trouble call or if Dastrup would try to get another Maintainer to cover the call, when the Claimant spoke with Williams in the third conversation and it was apparent that there had been no response to the trouble call and the Claimant said “I guess you can call somebody because I’m not driving up there now ... I was just putting my mask on to go to sleep” (Tr. 20; Carrier Hearing Exhibit 6), the Claimant clearly refused to respond to the trouble call. The Claimant was obligated under Rules 1.13, 1.15 and the Signal Department requirements to not refuse trouble calls. Substantial evidence therefore supports the Carrier’s position that the Claimant did not comply with those obligations.

Under the circumstances and given the demonstrated misconduct, a 30-day suspension was not arbitrary.

AWARD

Claim denied.

**Form 1
Page 4**

**Award No. 43317
Docket No. SG-44079
19-3-NRAB-00003-170148**

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 14th day of December 2018.