

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43354
Docket No. SG-44542
19-3-NRAB-00003-170732**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Northeastern Illinois Regional Commuter
(Railroad Corporation (NIRC/METRA)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corp. (METRA):

Claim on behalf of M.E. Molandro, for 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 53 when it issued the harsh and excessive discipline of a 10-day actual 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 August 1, 2016. Carrier’s File No. 11-7-958. General Chairman’s File No. 21-D-16. BRS File Case No. 15723-NIRC.”

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 July 27, 2016, the Claimant was directed to attend a formal Investigation and hearing on charges that he allegedly had in his possession a copy of the Carrier's Annual Rules Exam Booklet. The Investigation was conducted, as scheduled, on August 1, 2016. By letter dated August 3, 2016, 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 suspension. The Organization subsequently 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 received a fair and impartial hearing, because substantial evidence establishes that the Claimant was guilty as charged, and because the discipline imposed was not harsh, arbitrary, or an abuse of discretion, but was commensurate with the proven violation. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proof, 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 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 violating Employee Conduct Rule M involving dishonesty when he was found to be in possession of the exam booklet prior to taking the test in 2016. The unauthorized copy of the exam booklet was found inside a grade crossing bungalow on the Claimant's territory. Possessing an unauthorized copy of that booklet is a serious violation of the Carrier's rules and clearly involves dishonesty on the part of the Claimant.

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 issued a ten-day suspension by the Carrier for his wrongdoing. The Claimant indicated that he found the booklet in his personal vehicle and he thought it was a study guide. Given the mitigating factors that are clearly involved in this case, the Board finds that the Carrier acted unreasonably when it issued the ten-day suspension to the Claimant. The Claimant was clearly deserving of discipline and, therefore, we hold that the Claimant's ten-day suspension shall be reduced to a five-day suspension, and he shall be made whole for the additional five days. The Claimant is now aware of the fact that he did commit wrongdoing and, therefore, a ten-day suspension would have been punitive.

The ten-day suspension of the Claimant is hereby 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 14th day of December 2018.