

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43806  
Docket No. SG-44957  
19-3-NRAB-00003-180406**

**The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railroad Signalmen**  
**(The Belt Railway Company of Chicago**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Belt Railway of Chicago:**

**Claim on behalf of K.D. Hall, for immediate return to service with compensation for all lost wages, including overtime, all benefits unimpaired including Railroad Retirement credits, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 52, when it issued the harsh and excessive discipline of a 5-day actual suspension to the Claimant, without providing him a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on December 20, 2016. Carrier’s File No. Hall Investigation 1. General Chairman’s File No. 16-07 BRC. BRS Case No. 15840-BELT. NMB Code No. 119.”**

**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.

The Claimant Ken Hall entered the service of the Carrier on August 8, 2001 as a Signalman. At the time the subject incident occurred that resulted in the discipline imposed of a five (5) day actual suspension, the Claimant was assigned to the position of Signal Maintainer in Carrier's Signal Department with the title of Road Maintainer.

On the date of the incident, Thursday, November 17, 2016 the Claimant's shift hours were 6:00 A.M. to 2:00 P.M. At his morning job briefing, Signal Communication Supervisor, Mike Lill assigned the Claimant to dig out tie cribs around switches on the West Territory with two fellow maintainers, Ed Darby and Pete Kapolka for the first four (4) hours of his shift and for the remaining four (4) hours of his shift the Claimant was to continue digging out cribs by himself as his fellow maintainers Darby and Kapolka had ended their shift. During the remainder of his shift while working by himself the Claimant was instructed to take trouble calls if any on the South Territory. At 10:00 A.M. having completed the assigned work for the first four (4) hours of his shift, the Claimant, contrary to the instructions given him at the morning briefing to remain on the West Territory to continue digging out cribs, instead proceeded to Belt Junction, a location twelve (12) miles from his assigned work location to complete time sheets and listen for trouble calls as instructed.

At around 12:00 Noon/ 12:15 P.M., while performing routine inspections and efficiency testing, Ron Wanda, Manager of Signals and Communication along with Supervisor Lill, one of two subordinate supervisors under his supervision, arrived at Belt Junction interlocking and observed the Claimant sitting in his truck that was parked behind the north bungalow watching the signal gang work on cold air blower repairs. According to Wanda, he and Lill approached the Claimant to discuss with him why he was there and if he had trouble calls at that location to which the Claimant answered in the negative instead, telling them he was at lunch and filling out time sheets. Lill explained that filling out time sheets is done on another shift. Wanda explained that while on the clock, maintainers are entitled to take a twenty (20) minute lunch break between their work schedule but in this particular instance Wanda asserted that the Claimant was wrong by taking a lunch break at the Belt Junction which was not his assigned work location at the time and additionally, the Claimant admitted he was not at that location on a trouble call. Moreover, when asked how long he had been at Belt Junction at the time Wanda and Lill observed him sitting in his truck and approached him, the Claimant stated he had been there thirty (30) minutes.

After the Claimant admitted he was not at the Belt Junction on a trouble call and letting the Claimant finish eating his lunch, Wanda assigned him to assist the signal gang in digging out switches at the Belt Junction interlocking location. Wanda then met with Signal Foreman, Tony Przewoznik to make sure the Claimant was given a proper job briefing the purpose of which was to inform the Claimant about roadway worker rules, the type of protection they had for his safety and the safety of others. While meeting with Foreman Przewoznik, the Claimant exited his truck and according to Wanda, the Claimant then slammed both his truck door and compartment bins and complained about not having washroom facilities available informing he would be contacting the Labor Department to file a formal complaint against him. In regard to the Claimant's complaint about the lack of washroom facilities at Belt Junction interlocking, Wanda explained Carrier does not have washroom facilities at every location. Wanda further explained when the Claimant made this complaint he did not inquire of the Claimant if he needed to use the "potty". Lill informed the Claimant that bathrooms were located in the back of the office and confirmed that Wanda did not ask the Claimant if he needed to go "potty". Prior to his leaving Belt Junction, Wanda informed the Claimant he was to assist in helping the signal gang as opposed to just watching them. According to Wanda, at that point the Claimant became very argumentative and quarrelsome, and continued to find excuses not to perform any work. Wanda then told the Claimant if he didn't want to work he could go home. Lill stated at first there was no tension between Wanda and the Claimant but as their verbal interaction continued tension did develop with Wanda raising his voice but only because he was talking over the noise of the equipment being used. Wanda also acknowledged raising his voice when talking to the Claimant for the same reason, given the noise coming from the equipment being used at the site. Following their verbal exchange, Wanda along with Lill then departed Belt Junction.

The Claimant recalled that in his morning briefing contrary to what Lill related, that Lill instructed him to dig out cribs with Pete K and Ed D for four (4) hours and then take trouble calls the remainder of the day in the South Territory, noting that Belt Junction is part of the South Territory. the Claimant asserted he had followed the instructions given him by Lill in the morning briefing up until the time Wanda and Lill approached him at Belt Junction and that when Wanda and Lill approached him, the instructions given him had changed. The Claimant acknowledged that he told Wanda and Lill when they approached him sitting in his truck that he was eating lunch and doing time sheets. The Claimant further acknowledged that eating lunch is an everyday part of the job but doing time sheets is not but he was doing that work just to get it out of the way. According to the Claimant, Wanda immediately started yelling at him asking him what he had been doing all day. The Claimant told Wanda he was doing

what Lill had instructed him to do, digging cribs the first half of the day and then running trouble calls on the South Territory the second half of his shift. The Claimant asserted that Wanda from the outset was discourteous, quarrelsome and hostile toward him when he first approached him. The Claimant opined that managers are supposed to follow the same rules of conduct employees are to follow but given his actions, Wanda did not follow those rules when he confronted him. the Claimant related that after the initial conversation occurred between Wanda, Lill and him, he asked where the nearest bathroom was and contrary to what Wanda and Lill recalled, Wanda responded by asking him if he needed to go "potty". The Claimant opined he believed Wanda's response was intended to make him look bad and he considered his response including possibly the Carrier as well as evidence of harassment toward him. The Claimant speculated that had Wanda been courteous and not quarrelsome and hostile when Wanda first approached him, the incident that occurred could have been avoided and he would have assented to the change in his work assignment given to him by Lill in the morning briefing.

The Claimant related that given his and Wanda's past relationship, Wanda gets aggravated with him when Wanda sees him not doing anything. The Claimant asserted he has never observed Wanda yelling at other employees and believes that Wanda has it out for him due first, to an incident that occurred years back when he physically brushed up against Wanda when going through a door and Wanda accused him of elbowing him and second, due to his having had several surgeries, two for his shoulder (one in 2007 and another in 2010), and another surgery in 2011 for his ankle. The Claimant stated that despite these surgeries and his medical restriction to work only eight (8) hours, he regularly works overtime.

Given the occurrence of the foregoing described event on November 17, 2016, Carrier cited the Claimant for a formal investigation which was held on December 20, 2016. By letter dated December 27, 2016 Carrier informed the Claimant that as a result of testimony ascertained at the formal investigation it had determined he had violated General Code of Operating Rules 1.6 Conduct and 1.13 Reporting and Complying with Instruction relative to his having been found in his Company truck parked behind the bungalow at Belt Junction and becoming hostile, discourteous and quarrelsome. Accordingly, based on his having violated both cited GCOR rules, Carrier imposed the discipline of a 5 day suspension.

The Board has considered and reviewed all argument asserted by the Organization and the Carrier and finds no merit to the Organization's position that the Claimant was denied his due process rights under both the Constitution of the United

States as well as under Rule 52 of the Organization's collectively bargained current Controlling Agreement effective July 1, 1966. The Board is in complete concurrence with Carrier's position as supported by myriad past decisions that the defense raised of a claimant being denied his/her due process based on the United States Constitution is completely inapplicable to claims arising from minor disputes also known as grievances under collective bargaining agreements consummated between carriers and organizations under the Railway Labor Act.

The Board further rejects the Organization's position that Carrier failed in its burden as supported by past precedent to proffer substantial evidence of the Claimant's guilt. Notwithstanding a claim by the Organization that there occurred a misunderstanding about the work assignment given the Claimant by Supervisor Lill at the morning briefing, we find the work assignment to have been very clear of what work the Claimant was expected to perform and the location at which he was to perform the work for his entire tour of duty. With slightly more than fifteen (15) years of service with the Carrier at the time of the occurrence of the subject incident, it is truly difficult to accept the defense raised by the Organization that the Claimant either misconstrued or misunderstood the work assignment given to him at the morning briefing by Lill. That work assignment as reviewed by the Board clearly instructed the Claimant to work with two (2) fellow Maintainers at the West Territory location for the first half of his tour of duty, that is the first four (4) hours of his eight (8) hour shift and at the end of those first four (4) hours he was to work alone by himself continuing to perform the duty of digging out tie cribs around switches interrupted only by responding to trouble calls that might arise in the South Territory. The record evidence before us clearly substantiates the fact that at the end of his first four (4) hours of work following the departure of his fellow two (2) Maintainers, he left his location at the West Territory without having received any trouble call to respond to but rather on his own volition proceeded to drive twelve (12) miles from that location to Belt Junction interlocking located in the South Territory. There is no dispute in the record before us as to this fact as the Claimant himself admitted to both Wanda and Lill when confronted by them while sitting in his truck eating lunch that he was at Belt Junction but not as a result of responding to any trouble received by him. This fact alone establishes that as charged by Carrier, the Claimant was in violation of GCOR Rule 1.13, Reporting and Complying with Instructions which reads in full as follows:

**"Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties."**

The record evidence well establishes that contrary to Supervisor Lill's instruction to remain at the West Territory location to continue his assigned work after his two fellow Maintainers left at the half time of his eight (8) hour tour of duty and to leave that location solely as a result of receiving a trouble call arising in the South Territory, the Claimant, on his own accord, failed to follow those instructions and left his assigned work site for no particular reason stated in the record other than he admitted he was not at Belt Junction as a result of responding to any trouble call.

As to the charge of having violated GCOR Rule 1.6 Conduct, specifically 1.6.6 Quarrelsome and 1.6.7 Discourteous, nowhere in the record evidence before the Board did the Claimant ever dispute the testimony proffered by Wanda and Lill, that after having received the directive by Wanda to remain at Belt Junction to assist the Maintainer gang in the performance of their work assignment, he exited his truck and proceeded to slam the truck door and slam the bins of his truck. This behavior coupled with his irritation over the alleged lack of bathroom facilities at Belt Junction and his threat directed at Wanda he was going to file a charge against him with the Labor Department regarding such lack of facilities is sufficient proof to support Carrier's charge the Claimant was guilty of having violated GCOR Rule 1.6. We are convinced by the record testimony that as a result of events that occurred in the past as long ago as ten (10) years that the Claimant's and Wanda's relationship is marred by problems that seem to have lingered on over the years. However, this less than desirable relationship does not and cannot justify the Claimant's reaction when directed by Wanda to remain at Belt Junction to work with the maintainer gang there for the remaining four (4) hours of his tour of duty which clearly was a change in his assignment of work given him at the morning briefing by Lill. Upon this finding, we concur in Carrier's determination based on all evidence adduced at the formal investigation that the Claimant was also guilty of having violated GCOR Rule 1.6.

As to the imposition of discipline of a 5 day suspension relative to the Claimant's having violated both charged GCOR rules, we find we are in total disagreement with the Organization's position that the imposed suspension is one that is harsh and excessive and additionally punitive in nature. In fact, we find based on all the evidence adduced at the formal investigation the discipline of a 5 day suspension to be lenient when Carrier could have also charged the Claimant with insubordination by non-compliance with his work assignment and the threat he uttered toward Wanda of reporting him to the Labor Department.

**AWARD**

Claim denied.

**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 16th day of July 2019.