

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43807
Docket No. SG-44958
19-3-NRAB-00003-180407**

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 10-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 2. General Chairman’s File No. 16-08-BRC. BRS File Case No. 15841-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.

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 ten (10) 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 subject incident, Friday November 18, 2016, the Claimant's shift hours were 6:00 A.M. to 2:00 P.M. According to Signal Communications Supervisor Michael Lill, upon completion of the morning briefing the Claimant informed him he was not available to work overtime and he needed not to work beyond the ending time of his tour of duty as he had a scheduled meeting at 2:00 P.M. with Human Resources. Lill related that neither the Claimant nor any other maintainers assigned to the construction gang at Belt Junction were asked to work overtime nor did any member of the gang work overtime or had their tour of duty extended beyond their ending time that day. Contrary to Lill's account of what he told Lill at the conclusion of the morning briefing, the Claimant related he said to Lill he wanted to leave his shift on time that day so he could talk to Human Resources. The Claimant asserted he never told Lill he had an appointment that afternoon with Human Resources.

In accord with standard operating procedure, Lill contacted Human Resources Director Tim Coffey to verify that the Claimant had a scheduled appointment to meet with him that afternoon. Coffey told Lill he had no recollection or any communication with the Claimant for a meeting that day. Coffey related that at 1:43 P.M. he received a voicemail message from the Claimant that afternoon recalling verbatim that the Claimant stated the following: "Hey Tim, this is Ken Hall. I have an issue. I guess I will have to go through the Metropolitan. I will talk to you later. Bye." Coffey explained that he usually returns calls received within a certain amount of time but he did not return the Claimant's call for two reasons; first, the Claimant did not leave his telephone number and second, according to the Claimant's voicemail message, whatever the issue was that prompted his call the Claimant informed he would go ahead and contact Metropolitan.

Coffey explained that the Claimant's reference in his voicemail message to Metropolitan was referring to Metropolitan Family Services, a company Carrier uses to provide its Employee Assistance Program.

Coffey related that the Claimant came to his office on November 28, 2016, ten (10) days after the Claimant's initial call to him requesting to see him and that he and

Carrier staff attorney Chris Steinway met with the Claimant at which meeting Coffey learned the Claimant's issue was not one subject to the EAP program but rather it pertained to a complaint by the Claimant of being harassed by management. Said complaint pertained to an encounter with Ron Wanda, Manager of Signals and Communication and Supervisor Lill that had occurred on November 17, 2016, the day before the Claimant made his initial call to Coffey and the reason he sought to meet with Coffey initially on November 18, 2016. That incident was the subject of Docket 44957 which resulted in Carrier assessing the Claimant a five (5) day actual suspension which disciplinary action the Board upheld. Coffey noted that the Claimant's voicemail message left on his initial call was without specificity as to the issue he was calling about but noted that Carrier has a hotline to handle issues of harassment and ethics. Rather than calling the hotline, the voicemail message left by the Claimant referenced his intent to call Metropolitan which was not the venue to handle his complaint of harassment.

the Claimant related that in his meeting with Coffey on November 28, 2016 all Coffey was concerned about was his conduct exhibited toward Wanda and that he did not care in the least that he had been harassed and degraded by Wanda. The Claimant noted that nothing was resolved at this meeting and that the only thing that came of this meeting was Coffey telling him he would have a talk with Wanda. The Claimant opined that this was not a proper way for the Carrier to handle a harassment allegation and speculated that it seemed to him Carrier was out to get him. The Claimant further opined Carrier treated him this way because the Carrier deemed him to be a troublemaker.

By Notice dated December 1, 2016 just three (3) days after the Claimant met with Coffey regarding his complaint of harassment by Manager Wanda, Carrier cited him with formal investigation for allegedly having violated GCOR Rule 1.6 Conduct: "wherein during your tour of duty on Friday, November 18, 2016, you stated that you could not work overtime account you had an appointment with the Human Resource Department in the afternoon." The formal investigation was held on December 20, 2016, the same day the formal investigation was convened to ascertain the facts and determine the Claimant's responsibility in connection with the incident that occurred on November 17, 2016 that resulted in the imposition of his five (5) day actual suspension.

On-property and at the formal investigation, the Organization raised a number of procedural and substantive challenges pertaining to the disciplinary ten (10) day suspension imposed on the Claimant that included the following: 1) untimely response to the Organization's initial appeal constituting a violation of Rule 53 of the July 1, 1966 Collective Bargaining Agreement; 2) Carrier denied the Organization request for pre-

investigation discovery of evidence such as a list of witnesses Carrier intended to call as well as all exhibits, documents, and any other items Carrier plans to enter at the hearing; and 3) Carrier denied the Claimant's due process rights to a fair and impartial hearing that included not allowing the Claimant and his representatives to question all relevant witnesses such as Carrier's charging officer Signal Supervisor John Ramirez and Human Resource Department General attorney Christopher Steinway; that Conducting Officer Dave Cargill, Manager of Engineering presiding over the investigation failed to rule on objections raised by the Organization and exhibited bias toward the Claimant in his conduct of the hearing by limiting questioning of Carrier witnesses by the Claimant and his representatives.

The Board has reviewed and considered all the foregoing objections raised by the Organization and determines that all have been addressed successfully by Carrier. Specifically, we find given the date Carrier responded to the Organization's initial appeal not to have been untimely as alleged by the Organization; that historically in the railroad industry there is no requirement nor has there been a practice established permitting pre-investigation discovery by Organizations; and that the Claimant in no respect was deprived of any of his due process rights as raised by the Organization, to wit: while Conducting Officer Cargill's ruling on objections were neither sustained nor overruled, nevertheless he noted them all on the record of the proceedings permitting the hearing to move forward expeditiously and efficiently without prejudice; that wherever in the record proceedings Conducting Officer Cargill limited questioning of witnesses we find it was legitimately based upon rulings of relevancy.

As to the Organization's argument on the merits that Carrier failed to prove the charge that the Claimant violated GCOR Rule 1.6 Conduct, more specifically 1.6.4 Dishonest, we find upon a thorough and comprehensive review of all record evidence that substantial evidence was presented by Carrier in refutation of the Organization's defense that either Supervisor Lill being a relatively inexperienced supervisor simply forgot or misheard what the Claimant had said to him regarding a visit to the Human Resources Department or there was complete miscommunication that occurred between the Claimant and Lill at the morning briefing. The Board is struck by the similarity of this defense with the defense presented at the Claimant's formal investigation regarding his five (5) day suspension wherein, it was asserted a miscommunication also occurred at the morning briefing given by Lill as to the particulars of the Claimant's work assignment. In that case the Claimant maintained he had complied with instructions as he understood them to be which was found by the Board not to be the case and, in this case as well we find no evidence of a miscommunication predicated mainly on the established fact in the record evidence that

after his conversation with the Claimant at the morning briefing, Lill immediately contacted Human Resources Director Coffey to verify having been told by the Claimant he had a 2:00 P.M. appointment for a meeting at Human Resources and that was the reason he was unable to either work beyond the end of his tour of duty or to work overtime that day. There would have been no reason for Lill to have contacted Coffey to verify what the Claimant had told him as to the reason for not being able to work either beyond the ending time of his shift or to work overtime had the Claimant simply informed him he wanted to go to see Human Resources after his shift ended. Additionally, had the Claimant actually had a 2:00 P.M. appointment to meet at the Human Resources Department there would have been no reason for the Claimant to call the Department, specifically Director Coffey at 1:43 P.M. and leave a voicemail message. It is also suspect as to the reason why the Claimant would have called Coffey prior to the end of his shift and left a voicemail message had he really had a 2:00 P.M. appointment with Coffey. Overall, it appears to the Board from both the prior case and this instant case that the Claimant has a predisposition to prevaricate.

In addition to concurring with Carrier's finding the Claimant guilty of having violated GCOR Rule 1.6.4, we reject the Organization's argument that the discipline imposed on the Claimant of a ten (10) day actual suspension to be unwarranted, harsh and excessive. As practiced by Carrier, it adheres to the scheme of progressive discipline and, as such, coming on the heels of a five (5) day suspension for having infringed the very same GCOR Rule 1.6, following the principles of progressive discipline to correct behavior rather than to inflict a punishment, the next step in keeping with said principles is advancing to a more severe disciplinary action. In the case at bar under all the given circumstances, that next step was for Carrier to invoke a ten (10) actual suspension and therefore we find the imposition of this quantum of discipline not to be, as posited by the Organization, to be unwarranted, harsh and excessive.

AWARD

Claim denied.

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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.