

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43899  
Docket No. SG-44786  
20-3-NRAB-00003-180223**

**The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when the award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railroad Signalmen**  
**(Illinois Central Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):**

**Claim on behalf of N.S. Lowe, for reinstatement to service with compensation for all time lost, including overtime, with all rights and benefits that he would normally be entitled to, and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 35, when it issued the harsh and excessive discipline of dismissal 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 January 5, 2017. Carrier’s File No. IC-BRS-2017-0003. General Chairman’s File No. IC002-17. BRS File Case No. 15753-IC.”**

**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.

This is the first of two claims involving separate accidents by the Claimant that occurred in the same vehicle within a few days (see also, Award No. 43900). At the time of the two incidents, the Claimant was assigned as a Signal Maintainer in the Coulterville, Illinois, area; he had less than five years' service with the Carrier.

On November 13, 2016, the Claimant was driving a Hy-Rail truck and pulled into a church parking lot to turn around. In backing up, he unknowingly backed into a standing water spigot. As he was driving out of the parking lot, the pastor of the church flagged him down and showed him that the pipe was bent. There was no other damage obviously apparent, and no sound of running water. After straightening the spigot, the Claimant drove off. He did not report the incident to his supervisor. As the Claimant testified at the investigatory hearing, "As far as me and the pastor was concerned, there was no issue, nothing was broke, nothing was damaged on the truck. "... Nothing was wrong. Nothing to report." The next day, the pastor at the church saw standing water around the spigot. He dug down and discovered that the impact had in fact broken the water pipe underground. He contacted the Carrier about the damage. The Claimant's supervisor did not hear about the incident until December 22, 2016, and on December 29, 2016, the Carrier issued the Claimant a Notice of Investigation for a hearing to be held on January 5, 2017.

On November 17, 2016, at approximately 9:30 P.M., Claimant was driving the same Hy-Rail vehicle when he backed up into a signal mast, damaging both the vehicle and the signal mast. Initially the Claimant did not realize that he had made contact with the equipment and he drove away. However, when he returned a short time later, looking for his cell phone, he discovered the damage. He immediately contacted his supervisor and followed the prescribed protocol for reporting an accident. The Carrier issued a Notice of Investigation for this incident on November 22, 2016. The hearing was originally scheduled for December 1, 2016, but was mutually postponed.

On January 5, 2017, separate investigatory hearings were held for the two incidents.<sup>1</sup> By letter dated January 12, 2017, the Carrier issued its decision regarding the November 13, 2016, incident. The Claimant was found in violation of Section II

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<sup>1</sup> According to the transcripts of the hearings, the hearing for the November 17, 2016, incident started at 9:00 A.M. and the second hearing, for the November 14, 2016, incident began at 2:30 P.M.

Core Safety Rules, Rights and Responsibilities, Rule 18, and US Operating Rules General Rule H, "Furnishing Information and Conduct." The discipline assessed was Dismissal from Service.

The Organization filed a timely appeal. The parties having been unable to resolve the matter through the grievance process, it was appealed to the Board for a final and binding decision.

According to the Carrier, the record establishes just cause for discipline: the Claimant was negligent when he backed into the water spigot and he violated established policy when he failed to report the accident to his supervisor. The level of discipline imposed was appropriate. The Claimant has a history of bad decision making and poor driving, as evidenced by the fact that he had a similar accident only a few days later. The Organization objects that the level of discipline imposed was not progressive and was too harsh under the circumstances. The Claimant did not act in "willful disregard" of any actions and consequences. He fixed what appeared to be slight damage to the spigot by straightening it up. He and the pastor agreed that everything appeared to be all right. The incident appeared to be so insignificant that he did not think it warranted reporting. Dismissal was entirely unwarranted. The matter could, and should, have been handled by coaching.

There is no dispute about what happened. The Claimant candidly acknowledged his responsibility for the accident, and he explained why he had not reported the incident when it occurred. Considering the circumstances, the Board concludes that a lesser penalty than dismissal would have been appropriate. The Board would reduce the penalty, but there is no need to do so, given the circumstances of Claimant's second accident, on November 17, 2016. When the November 13 incident came to light, the Claimant was already being held out of service for the November 17 incident, so no monetary remedy would be due him. Moreover, as the Board concludes in Award No. 43900, its decision on the second incident, dismissal was appropriate there. Accordingly, the Board will deny this claim.

### 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 28th day of January 2020.**