

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43903  
Docket No. SG-44882  
20-3-NRAB-00003-180347**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when 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 B.Q. Alexander, 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 February 9, 2017. Carrier’s File No. IC-BRS-2017-00010. General Chairman’s File No. IC-009-17. BRS File Case No. 15756-IC. NMB Code No. 173.”

**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.

On January 17, 2017, the Claimant was working a shift from 0700-1600 hours as a Signal Maintainer at or near LaPlace, Louisiana. Nearby, sometime before 1530 hours, an audit team removed another Signal Maintainer, Eric Carter, from service due to irregularities and unsatisfactory conditions it had identified on equipment in his territory. Signal Supervisor Kristan Gilmore called the Claimant and asked him to report to the Central Avenue crossing, on Carter's territory, to lock out a switch. The Claimant left LaPlace at about 1540 hours and arrived near the Central Avenue crossing at about 1640 hours. According to the Claimant, he did not know exactly where the switch that needed to be locked out was. He contacted Carter, who was at a Subway restaurant where he had been dropped off by the audit team, to see if Carter could point out the switch to him, and then picked Carter up at the Subway. Claimant and Carter drove to the crossing, where Carter pointed out the problem switch. The Claimant drove Carter to a nearby Walgreen's store, dropped him off, and returned to the Central Avenue crossing to lock the switch out, arriving at about 1656 hours. The Claimant finished his task shortly before 1800 hours, after which he picked up Carter from Academy Sporting Goods and drove Carter home. The Claimant testified that having been removed from service and his Company vehicle having been taken away, Carter had no other way to get to his residence in Tickfaw, Louisiana, approximately an hour away. The two men had worked in the same territory for some years, and Claimant sought to do a good deed by taking Carter home—"He was in trouble and needed a ride home." The Claimant dropped Carter off at about 1906 hours. He then drove to his home in Sorrento, Louisiana, arriving at about 2020 hours. The Claimant claimed three hours at the overtime rate for the date, although his actual work was accomplished by 1800 hours, or two hours after the end of his normal schedule.

The three men on the audit team that had removed Carter from service were still in the area of the Central Avenue crossing when the Claimant arrived. They observed the Claimant driving away from the crossing by himself and returning with Carter in his truck, slowing down as they approached the crossing. They further observed the Claimant dropping Carter off at the Walgreen's store, returning to the crossing, and getting to work. In following up on the GPS records of Claimant's company vehicle, they learned that Claimant had subsequently picked Carter up from a sporting goods store and driven him home, an hour away, before driving himself home, another hour away. At no point did the Claimant seek permission from a supervisor for any of his actions.

On January 27, 2017, the Carrier sent Claimant a Notice of Investigation “to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies in connection with you allegedly failing to follow instructions from your Supervisor to promptly report to Central Avenue crossing and/or with you allegedly engaging in other than assigned duties by driving around another employee without proper authorization and/or with you allegedly stealing time by claiming straight time and/or overtime while engaging in such unauthorized activity....” The investigation was conducted on February 9, 2017. The Claimant stated that he did not realize that Carter was “an unauthorized person” that he could not have in his truck. He sought Carter’s help in identifying the problem switch so that he could get to work on it more quickly. He did not want to leave his co-worker stranded an hour away from home, which is why he gave him a ride. Regarding his overtime hours, the Claimant testified that he was called back to work on the same switch the next day, January 18, 2017, which resulted in one hour of overtime. When he marked his time in SAP, he combined the overtime for the two days and marked three hours for January 17, instead of two hours for January 17 and one hour for January 18. His supervisor approved the overtime.

By letter dated February 17, 2017, the Carrier notified the Claimant that it had found him guilty of violating USOR General Rule B, Reporting and Complying with Instructions, Rule H, Furnishing Information and Conduct, and Rule I, Duty Reporting or Absence. The discipline assessed was dismissal from service. The Organization filed a timely claim. The parties having been unable to resolve the dispute through the grievance process, the matter was appealed to the Board for a final and binding decision.

The Carrier contends that the record establishes that the Claimant was guilty of the infractions with which he was charged. The Claimant’s irregular timekeeping on his overtime hours shows that he is not a reliable and truthful employee. He violated General Rule B, Reporting and Complying with Instructions, by failing to follow instructions when he picked up and dropped off Mr. Carter instead of reporting to the job site as instructed. He violated Rule H, Furnishing Information and Conduct, by willfully neglecting his duties when he picked up Carter instead of completing his duties at the crossing and by being dishonest and/or making false reports when he claimed three hours of overtime on January 17<sup>th</sup> instead of the two hours he actually worked. Finally, he violated Rule I, Duty Reporting or Absence, by engaging in other business when he drove Carter around while he was on duty and operating a

Company-issued vehicle. The investigation was fair and impartial, and dismissal was appropriate given the Claimant's conduct and his prior disciplinary record.

According to the Organization, the Carrier did not sustain its burden to provide substantial evidence to support its allegations against the Claimant, and the resulting discipline was both unwarranted and an abuse of managerial discretion. The Claimant was not guilty of failing to follow instructions; he reported to the Central Avenue crossing and performed the required work. He did not falsify his overtime records, but combined two days' overtime at the same location into one payroll entry. Nor did the Claimant engage in "other business" in violation of USOR General Rule I when he transported Carter in his company vehicle on company time. The Claimant was unfamiliar with the location and utilized Carter for directions. The total amount of time between when Claimant picked Carter up at the Subway restaurant, drove back to the Central Avenue crossing for Carter to identify the switch in need of repair, and dropped Carter off at Walgreen's was only a few seconds over 8 minutes. Nor did Claimant charge the Carrier for taking Carter home after he completed his work. Even if there were a violation, dismissal in the instant case is unwarranted. The Carrier arbitrarily ignored progressive discipline and escalated discipline to termination. A more appropriate lesser discipline, such as coaching, would have improved Claimant's understanding and performance. Instead, the Carrier acted in a punitive manner without consideration for the rehabilitative purpose progressive discipline is meant to serve.

The basic facts of what occurred on January 17, 2017, in and around the Central Avenue crossing are not in dispute. The real issues before the Board are whether the Claimant was guilty of violating any of the Carrier's rules and whether dismissal was an appropriate level of discipline.

The Claimant had credible and reasonable explanations for his actions, specifically, why he picked up Carter after the latter had been removed from service and why he input his overtime for January 17 and 18 the way he did. But the fact is, his actions were inconsistent with the Carrier's rules. He should have asked a supervisor's permission to have Carter direct him to the correct switch before doing so, and he should not have combined his overtime for January 17 and January 18 into one payroll entry for January 17. Moreover, this Claimant has been before this Board before, in a case where he failed to keep his supervisors advised of problems he was having maintaining the equipment in his territory. He is a long-term employee who knows, or should know, what the rules are, and he must be willing to abide by them.

The Carrier has to have confidence that its signal personnel, who work in the field without immediate direct supervision, will follow its reasonable rules and regulations. While a certain amount of initiative in field employees is a good thing, those employees must keep their supervisors informed of any actions that deviate from standard operating procedures. If there is any question about a proposed course of action, the employee should contact his or her supervisor first, before acting. Had the Claimant done that in this case, he would not now be before the Board. His willingness to play fast and loose with payroll reporting requirements is particularly troubling. The Board is not convinced that the Claimant was attempting to charge the Carrier for the extra hour that it took for him to drive Carter home—but again, if Claimant had simply followed the policies for reporting his overtime correctly, he would not now be before the Board.

The Claimant's conduct provided just cause for discipline: he failed to contact his supervisors before picking up and taking Carter to the Central Avenue crossing and back to Walgreen's, and he mis-reported his overtime for January 18, 2017. The level of discipline originally assessed was based at least in part on the Claimant's prior disciplinary record, which included a substantial suspension. However, subsequent to the incident that resulted in his termination, that discipline was reduced by this Board. He is a long-term employee, and on that basis the Board is prepared to reinstate his employment, subject to a last chance agreement, to be drafted by the Carrier and the Organization. The Claimant needs to understand that he must be prepared to follow the reasonable rules established by the Carrier if he is to retain his position. Because of his failure to report his overtime correctly, which led the Carrier to conclude that he had been dishonest, the Board is not willing to reinstate him with back pay, but it will reinstate his benefits, such as seniority, vacation entitlement, and similar benefits.<sup>1</sup>

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<sup>1</sup> The Board understands that the Claimant has raised questions about the remedy in his prior claim, which was previously decided by the Board. (Award 43405) In that case, the Carrier had assessed discipline of a 60-day suspension (30 days actual) and a one-year disqualification from working as a Signal Inspector. (He was working as a Signal Maintainer at that time.) The Board reduced the discipline to a 10-day actual suspension and reversed the disqualification. Given the facts of that case, the reduced discipline was the minimum that the Board believed to be consistent with the Claimant's misconduct. He was entitled to back pay in the amount of 20 days at the rate then paid for his position, Signal Maintainer. There is no showing that the Claimant would have been promoted to Signal Inspector or otherwise entitled to any higher rate of pay in his back pay award. Claimant's conduct in the current case demonstrated his continuing disregard for the Carrier's reasonable procedures, particularly with respect to overtime reporting. While the Board recognizes and is sympathetic to Claimant's desire to facilitate getting the last-minute overtime assignment done quickly by asking for directions from Mr. Carter and to his desire to help a coworker who was stranded far from home with no transportation, there is no excuse for his having filled out his overtime hours improperly. He is being returned to work on a Last Chance basis in recognition of his prior service to the Carrier and because the Board believes that he is capable of becoming a credit to his position, if he will only pay attention to and abide by the Carrier's policies and procedures.

**The Board will retain jurisdiction pending implementation of the remedy.**

**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 28th day of January 2020.**