

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 43906  
Docket No. SG-44865  
20-3-NRAB-00003-180342

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(Northeast Illinois Regional Commuter Railroad Corporation (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. Reeves, for reinstatement to service with 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 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 September 28, 2016, continuing on January 10, 2017. Carrier’s File No. 11-7-1000. General Chairman’s File No. 1-D-17. BRS File Case No. 15862-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.

The Claimant was assigned as an Assistant Signalman in the Carrier's Milwaukee District. At the time of the incident herein, the Claimant had one year of service with the Carrier. On June 10, 2015, the Claimant was given notice of an investigation in connections with the following charge:

**"The purpose of this investigation is to determine the cause and assess responsibility, if any, in connection with your alleged failure to report a work related injury, that occurred during the month of July 2014 while performing your duties as a B&B laborer, installing brick pavers for the Joliet Station Platform. Also, your alleged intention to hide the "failure to report the injury", as well as the injury itself by continuing to work while injured, and receiving treatment until your notification to the carrier of the injury, on June 9, 2015."**

After a formal investigation on September 28, 2016 and January 10, 2017, the Claimant was found in violation of Engineering Department Special Instructions #5, Injury/Illness Report, and Employee Conduct Rule N, Paragraph #2, Item #4, Dishonesty, and was dismissed from the Carrier's service.

On June 8, 2015, the Claimant's request for time off to attend a doctor's appointment was denied because the Claimant wanted to return to work after his appointment. The Claimant responded that he was seeking treatment for a shoulder injury that had occurred on-duty in July 2014, nearly a year earlier. On June 17, 2015, the Claimant filled out a Railroad Employee Injury and/or Illness Report regarding the July 14, 2014 injury, indicating that he was still injured. The Claimant testified that he had informed Assistant Foreman Sean Holmes about the injury on the day that it occurred. Holmes denied that the Claimant reported the injury to him at the time or that any employee was injured on the day in question.

The Carrier contends that it has provided sufficient evidence that the Claimant was properly dismissed from its service for dishonesty. The Carrier contends that the record shows that the Claimant failed to report his injury on the day it occurred. The Carrier contends that it is the employee's responsibility to report any injury prior to the end of his workday. The Carrier contends that the Claimant was dishonest when he

later claimed that he had reported the injury to the Assistant Foreman. The Carrier contends that the Claimant made numerous calls to Supervisor Clark but failed to report any alleged threats made to him.

The Organization contends that the Claimant reported the injury to Holmes but was dissuaded from filing a claim because he was still in his probationary period. The Organization contends that the Claimant's attempt to "tough it out" and continue to work without reporting the injury was not dishonest although perhaps a lapse in judgment. The Organization contends that the Claimant was subjected to racial harassment, making his work environment challenging, as evidenced by the numerous calls made to supervision to report concerns. The Organization contends that a five-day suspension would be more appropriate for any alleged misconduct that occurred.

The Claimant was charged with violation of Engineering Department Special Instructions #5, Injury/Illness Report, and Employee Conduct Rule N, Paragraph #2, Item #4, Dishonesty. Special Instruction #5 states, in part, that an employee who "sustains an injury not requiring medical attention, ... must fill out an Incidental Injury/Illness report (form RC 99052) no later than the end of his tour of duty on the date the injury occurred." There is no dispute that the first time the Claimant filled out this report was 249 days after the date he claimed the injury occurred. The Claimant stated in this form and testified that he informed Assistant Foreman Holmes of the injury, but Holmes denied this fact.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

Here, the Hearing Officer assessed the credibility of Assistant Foreman Holmes and the Claimant regarding the Claimant's assertion that he informed Holmes of his injury and that Holmes dissuaded him from reporting it. Resolution of credibility questions and conflicting testimony is the province of the Hearing Officer, who has heard the testimony and observed the witnesses first-hand. As an appellate tribunal, the Board must defer to such judgments so long as there is substantial evidence to support the Hearing Officer's findings. This Board finds that the Carrier presented substantial evidence to support the charges against the Claimant.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

**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 28th day of January 2020.