

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 44208  
Docket No. SG-45061  
20-3-NRAB-00003-180436

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(Kansas City Southern Railway Company)

**STATEMENT OF CLAIM:**

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern:

Claim on behalf of B.A. Stanley, for reinstatement to his former position 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 47, 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 28, 2017. Carrier’s File No. K0617-7203. General Chairman’s File No. 17-018-KCS-185. BRS File Case No. 15769-KCS. NMB Code 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.

The Claimant, a Signal Inspector with regular duty hours 0700 - 1730, Monday through Thursday and rest days on Friday, Saturday, and Sunday, has approximately ten (10) years of service.

On Wednesday, February 8, 2017, the Claimant's supervisor assigned him to inspect a switch installation panel by a construction gang in DeWitter, LA, on Friday (February 10), Saturday (February 11) and Sunday (February 12).

On Saturday (February 11) the Claimant did not report for his assignment and did not inform his supervisor until Sunday (February 12). The Claimant states an "acquaintance" had possession of the Carrier's truck containing the Claimant's tools. The Claimant searched for the truck and, by the time he retrieved it on Saturday, the workday had ended.

On February 28, 2017, an investigative hearing convened and, following the hearing, the Carrier dismissed the Claimant for failure to protect his assignment in violation of the following rules:

**"1.13 Reporting and Complying with Instructions**

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.

**1.15 Duty-Reporting or Absence**

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal.

**30.3 Employee Responsibilities**

**Employee Responsibilities Regarding Notification and Documentation of the Need for Leave**

**Notification:** . . . employees may not lay off for any reason (including but not limited to leave for sickness, vacation, personal time, and safety days), without first making “proper notification” and obtaining prior permission from the “appropriate management supervisor.” For purposes of this rule, “appropriate management supervisor” means an employee’s immediate management supervisor or other management supervisor designated by the [Carrier] to receive leave requests. “Proper notification” means notification to the appropriate management supervisor, with as much advance notice as reasonably practicable. Leaving a message on . . . voice mail is not considered proper notification. Similarly, notifying a non-management employee (such as a working foreman) of a layoff does not satisfy this notification requirement.

\* \* \* \*

**Non-compliance:** This . . . Rule 30.3, A. supplements GCOR Rule 1.15. Failure to comply with this Rule 30.3 shall also be considered a failure to comply with instructions in violation of GCOR Rule 1.13.”

On April 28, 2017, the Organization filed an appeal alleging a violation of Rule 47 - Discipline/Investigations. BRS states the Claimant was improperly dismissed from service for his inability to work on a rest day; the dismissal is not proportional to the alleged offense given the mitigating circumstances. Signal Department Rule 30.3, A. - Employee Responsibilities and Rule 1.15 - Duty-Reporting or Absence do not apply because they pertain to employees requesting to lay off their assigned shift and employees reporting for their assigned shift. On the incident day the Claimant was on a rest day (Saturday) and not on his assigned shift (Monday - Thursday). His inability to work on a rest day does not violate Rule 1.15 and Signal Department Rule 30.3, A.

As for Rule 1.13 - Reporting and Complying with Instructions, the Claimant did not lack the ability or desire to comply with his supervisor’s instructions. Rather, he was unable to comply since he did not have access to the Carrier’s truck with his tools.

This claim was handled on-property in the usual manner, up to and including the Carrier's highest official designated to handle this matter. A conference convened but the parties' positions remained unchanged. Thereafter, the Organization referred the claim to the Board.

According to the Carrier, the Claimant acknowledged and understood his supervisor's instruction assigning him to perform inspection duties on February 10, 11 and 12. The Carrier asserts it can require employees to work on their rest day. By not reporting for duty on February 11 (Saturday) and not requesting permission to lay off, the Claimant failed to protect his assignment.

The Claimant did not report the missing Carrier's truck to local law enforcement and he waited until Sunday (February 12) to notify his supervisor that he did not report for his assigned duty on Saturday (February 11) because he did not have possession of the Carrier's truck. The Claimant acted at his own peril when failed to notify local law enforcement and delayed notifying his supervisor and, in doing so, committed major infractions of the rules. Under these circumstances, his dismissal was not excessive or an arbitrary decision nor an abuse of discretion.

BRS asserts the Claimant was not absent from his assigned shift (Monday - Thursday) as he was working on his rest days (Friday, Saturday, and Sunday). He did not violate Rule 1.15 - Duty-Reporting or Absence or Signal Department Rule 30.3, A. - Employee Responsibilities as those rules apply to employees' requesting to lay off their assigned shift, obtaining a leave of absence and employees reporting to their assigned shift.

According to the Organization, the pivotal point in this dispute is Rule 1.13 (follow and comply with supervisory instructions) and the Carrier's failure to consider the mitigating circumstance of the Claimant not having access to the Carrier's truck with his tools rendering him unable to report for duty on Saturday. The Claimant intended to report but was unable to do so for reasons beyond his control. Since the Claimant did not intend to disobey his supervisor's instructions and did not intend to miss or abstain from reporting for work, his dismissal is harsh and excessive. "The fact that he immediately reported the issue to his supervisor demonstrates that he was an honest employee and dismissal was not warranted."

Aside from BRS alleging a violation of Rule 47 - Discipline/Investigations, it cites awards that show discipline is harsh and excessive when mitigating circumstances are not considered which leads to a reduction in discipline or rescission

of it. For example, Third Division Award 37372 shows a reduced suspension for an employee with a long tenure of service because that employee “had no bad intent and was merely negligent and careless in his failure to keep the carrier apprised of where the truck was located.” BRS asserts this is the Claimant’s situation. For the Claimant, an employee with approximately ten (10) years of service, the claim should be sustained with the Claimant reinstated to service.

Addressing Rule 47 - Discipline/Investigations, the Board finds the Claimant received a fair and impartial hearing with all due process requirements and considerations afforded to him. The Carrier’s notice of formal investigation did not impair the Organization’s ability to prepare a defense. For example, at the opening of the hearing BRS affirmed it was “ready to proceed” with its defense of the Claimant and, in its closing summation, did not resurrect its procedural violation allegation. In this context the allegation is set aside.

The Board finds, additionally, there is substantial evidence establishing the Claimant’s culpability in violating the charged rules. The Claimant acknowledged the instructions issued by his supervisor assigning him to report for duty on his rest days -- Friday, Saturday, and Sunday. BRS points to no rule or other governing document that precludes the Carrier from directing the Claimant to work on his scheduled rest days.

The Claimant’s assertion that he intended to report for duty but could not report due to circumstances beyond his control -- missing Carrier truck -- is not persuasive. As the Organization recognized in its claim filing, his “scavenger hunt” for the missing truck “clearly put the Claimant in a precarious situation regarding the workday.” the Claimant intentionally did not inform local law enforcement that the truck was not in his possession nor did he notify as soon as practically reasonable appropriate management officials that he would not report for duty on Saturday thereby violating the charged rules.

BRS submitted Third Division Award 37374 in support of the Claimant’s situation. The claimant in that award retained possession of the carrier’s vehicle at all times whereas in this situation the Claimant did not have possession of the Carrier’s truck. The Claimant’s assertion of a good-faith intention to report for duty as a mitigating circumstance does not insulate him from the consequences of his major infractions of the rules. On-property correspondence refers to the Claimant’s prior discipline and his placement in the matrix under the Discipline Policy. Even without the Discipline Policy submitted as an exhibit, BRS knew the Claimant’s status in the

matrix and the next step under the Discipline Policy should the Claimant incur a major infraction.

In short, the Board finds there is substantial evidence that the Claimant did not protect his assignment on Saturday, February 11, 2017, because he did not comply with his supervisor's instructions and report for his assignment at the designated time and place with the necessary equipment to perform his assigned duties. The Claimant did not notify the appropriate management supervisor and request permission to lay off from his assignment nor did he request an approved absence.

After considering all the circumstances and adhering to the Board's appellate function not to conduct a *de novo* review, the Board finds the Claimant's dismissal does not exceed the bounds of reasonableness. There is substantial evidence supporting the Carrier's position and the mitigating circumstances are insufficient and unpersuasive as a basis to modify the assessed discipline. The Claimant's dismissal is not arbitrary or an abuse of discretion, thus, the claim will be denied.

**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 30th day of September 2020.