

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44216  
Docket No. SG-45492  
20-3-NRAB-00003-190265**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(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 G.L. Davis, 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 December 28, 2017. Carrier’s File No. 2017-0736. General Chairman’s File No. 18-002-KCS-185. BRS File Case No. 16001-KCS. NMB Code 15.” ”**

**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 proceeding and claim is the companion to the proceeding and claim in NRAB-00003-190266. Each claim was presented on the same day to the same presiding official but in separate hearings. The claims arise from events occurring between December 16, 2017 and December 18, 2017; under each claim the Carrier dismissed the Claimant. Although separate hearings with separate transcripts and different exhibits and rules, the parties refer to testimony from both hearings in their submissions for the instant claim.

In 2011 the Claimant established seniority in the Carrier's Signal Department. On Monday, December 11, 2017, he was displaced from his Signal Maintainer position in New Roads, LA. As a result of that displacement, he was assigned as Relief Signal Maintainer to New Orleans, LA pending bid. On Thursday, December 14 he worked relief and the next day (Friday, December 15) the Claimant was on vacation. On Saturday, December 16 he was involved in a vehicle accident at 0544 hours leading to his arrest and booking by the East Baton Rouge Parish Sheriff's Department on charges of Driving While Intoxicated (1<sup>st</sup> Offense) and Failure to Maintain Control (Careless Operation).

On Monday, December 17, 2017 the Claimant did not report for duty as scheduled at 0700 hours. Based on the Claimant's absence without authority, the Carrier charged the Claimant with violating Maintenance of Way and Signal Department Rule 30.3, Roadway Worker Responsibilities, Item A - Roadway Worker Responsibilities Regarding Notification and Documentation of the Need for Leave:

**"Rule 30.3 Roadway Worker Responsibilities**

**A. Roadway Worker Responsibilities Regarding Notification  
And Documentation of the Need for Leave**

**Notification: Maintenance of Way and Signal**

Department Roadway Workers 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, voice mail or text, on a management supervisor's phone or electronic device 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.

**Documentation:** Under certain circumstances, substantiating documentation regarding the need for leave may be required and/or the Roadway worker must be cleared by Medical Management before returning to work.

**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.

**Roadway workers Must Still Protect Employment:** Proper notification and compliance with any documentation requirement does not excuse any Roadway worker's responsibility to protect his or her job. Whether any particular absence is timely notice, properly substantiated, and preapproved does not diminish an Roadway worker's responsibility to protect his or her overall employment obligations.

**Exceptions:** This rule will have no application to absences protected by state or federal law, including but not limited to bona fide absences pursuant to the Family and Medical Leave Act (FMLA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). Notification, documentation, and prior approval of any such protected absences will be handled in accordance with the applicable state or federal law."

This matter was advanced through the agreed-upon on-property process up to and including the highest official designated by the Carrier to address this claim. Following conference wherein the parties' positions remained unchanged, the Organization referred the claim to the Board.

In reviewing the record, the Board finds, regarding the BRS alleged violation of Rule 47 - Discipline/Investigations, that the notice of hearing provided adequate information to alert the Claimant and the Organization as to the incident under investigation notwithstanding the mistaken inclusion of New Roads, LA instead of New Orleans, LA in the notice. The mistaken reference is not a procedural defect that precludes further consideration of the claim because it is not dispositive of nor a nexus to the charged rule violation, e.g., unauthorized absence.

The Board finds, furthermore, there is substantial evidence supporting the Carrier's decision that the Claimant violated Rule 30.3 - Item A. The evidence is the Claimant's testimony acknowledging he violated the rule by (1) failing to notify the appropriate management supervisor that he would not report on December 18, 2017; (2) leaving a voice mail message and text for his supervisor; and (3) asking a co-worker on December 17, 2017 at 1:00 p.m. to "pass along" notification of his absence to his supervisor. When seeking to lay off with an authorized absence, Rule 30.3 - Item A states that text, voice mail or co-worker is not proper notification.

Additionally, the Claimant's failure to notify the appropriate management supervisor on December 18, 2017 was not rectified by the preliminary approval of his request for family and medical leave (FML) at approximately 12:30 p.m. on that date. The Carrier's un rebutted statement is that the Claimant's FML was not effective until January 2, 2018. Assuming FML was effective upon preliminary approval, the Claimant incurred an unauthorized absence as he did not properly notify the appropriate management official from 7:00 a.m. until receiving FML preliminary approval. The exception for FML under Rule 30.3 - Item A was not applied retroactively and, thus, does not insulate the Claimant from the consequences of his unauthorized absence.

Aside from acknowledging his rule violation, the Claimant asserts he did not notify supervision of his absence because the physician treating him for injuries incurred during his vehicle accident on December 16, 2017 prohibited contact. Accepting his assertion as presented, the Claimant disregarded the physician's directive because he contacted a supervisor by text and voice mail and, after retrieving a voice mail from his supervisor on December 18 informing him to consult with the Medical Department, the Claimant followed that supervisory instruction. A document produced by the Claimant as his telephone record shows a number of calls by the Claimant notwithstanding the physician's ban on contacts.

Claimant was aware of Rule 30.3 - Item A and he understood the rule and how to comply with it but he chose not to follow the rule. Substantial evidence supports the Carrier's decision and mitigating circumstances are insufficient and unpersuasive as a basis to modify the assessed discipline. Claimant's dismissal does not exceed the bounds of reasonableness as it adheres to the progressive disciplinary scheme in the Discipline Policy given his disciplinary record showing a thirty (30) day suspension in May 2017.

Since Claimant's dismissal is founded upon substantial evidence establishing a rule violation, the Carrier's decision was 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.