

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44606  
Docket No. SG-45499  
22-3-NRAB-00003-190315**

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

**(BROTHERHOOD OF RAILROAD SIGNALMEN  
PARTIES TO DISPUTE: (  
(ILLINOIS CENTRAL RAILROAD COMPANY)**

**STATEMENT OF CLAIM:**

“Claim on behalf of B.J. Brown, for reinstatement to service with compensation for all time lost, including overtime, with all rights and benefits that he would be normally 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 7, 2018. Carrier's File No. IC-BRS-2018-00006. General Chairman's File No. IC-006-18. BRS File Case No. 16026-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.

The Claimant had been in the Carrier's service since 2007 and was working as a Signaller and assigned to a signal/PTC construction gang on the dates the dispute arose. The Claimant testified that on October 12, 2017, he was hrrailing on track equipment near the Kegley Control Point on the Bluford Subdivision. The Claimant stopped to get further authority and an AECOM employee named John was standing near the switch points by freshly mowed grass. The Claimant said they had a casual conversation in which John offered to let the Claimant borrow the lawn mower to decide if he liked the model and brand. The Claimant testified that on Saturday, October 14, 2017, he met with John to borrow the lawn mower and trailer. The Claimant said that he intended to return the mower and trailer on his next day back to work, or October 22, 2017. The Claimant took the mower and trailer to his home.

On October 17, 2017, S&C Construction Supervisor, Michael Youngman, was approached by Kevin Williams who runs a groundwater treatment facility for the Carrier. Williams asked Youngman if he had any knowledge regarding the whereabouts of a lawnmower and trailer that was kept on the Carrier's property at the Kegley Control Point. Youngman did not know of its whereabouts, so he contacted the CN police. After an investigation, CN Police informed Youngman that they located the lawnmower and trailer at the Claimant's residence.

The Claimant did not return to work on October 22. In fact, he did not return until October 28, 2017, when due to his late arrival, he drove his own vehicle to meet Youngman. Thereafter, deputies placed him under arrest. When a deputy asked the Claimant if he had taken a mower from the Kegley Control Point, he responded, "Yes, I borrowed it." The Claimant gave his vehicle keys to Youngman to move his truck. Upon opening the Claimant's driver side door, Youngman noticed a loaded firearm in the door panel. Supervisors disarmed the weapon and moved it to the back seat prior to driving the car to the courthouse for the Claimant to retrieve.

On October 31, 2017, the Claimant was given notice of an investigation in connection with the following charge:

[T]o develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies in connection with multiple incidents, when you allegedly stole a lawnmower and/or trailer stored at or near the Kegley control point on the Bluford Subdivision on or after October 13, 2017 and/or that you allegedly provided dishonest and/or false reports and/or statements

regarding such on or about October 28, 2017 and/or allegedly on October 28, 2017 had a loaded firearm in your personal vehicle at or near the Akin Junction parking lot.

After a formal investigation on February 7, 2018, the Claimant was found in violation of Life Rules Section 2 – Core Safety Rules “G”, USOR Rule M – Rail Road Property, and CN Code of Conduct and was dismissed from the Carrier’s service.

By letter dated April 10, 2018, the Organization presented a claim to the Carrier which was denied by letter dated June 6, 2018. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that it has produced substantial evidence to support its finding that the Claimant violated its rules. Williams testified without contradiction that he was responsible for the lawnmower and trailer and that he did not give anyone permission to borrow them. The Claimant’s assertion that he was given permission was not credible in light of his inability to identify John’s last name and his inability to contact John to corroborate his story.

The Carrier further contends that it provided credible evidence that the Claimant had a loaded firearm in his vehicle parked on the Carrier’s property, as the Claimant did not deny this conduct. The Carrier contends that its direction to the Claimant to report to work did not authorize him to bring his firearm onto CN property.

The Carrier contends that the Claimant was afforded a fair and impartial investigation. The Carrier contends that once the investigation of the missing property was complete on October 28, the Carrier notified the Claimant of the investigation. Further, the Carrier contends that neither the Claimant nor the Organization were harmed by the notice being dated October 31.

The Carrier contends that the discipline was warranted given the seriousness of the Claimant’s rule violations. The Carrier contends that its discipline policy clearly lists theft and possession of firearms as Level 4 infractions, justifying the Claimant’s dismissal.

The Organization contends that the Carrier did not fulfill its responsibility to provide a fair and impartial investigation. The Organization contends that the Carrier failed to comply with the clear time limits provided for charging an employee, as charges were not made in writing within ten days of knowledge of the offense. The Organization contends that the Carrier gained knowledge of the Claimant's alleged offense on October 20, 2017, when Youngman was notified that the missing lawn mower and trailer had been found at the Claimant's house. By the Agreement, the Carrier was required to notify the Claimant in writing of the charges against him by October 30, 2017, but waited until October 31 to notify the Claimant of the charges.

The Organization contends that the Hearing Officer failed to rule on objections and allowed the Investigation to continue, despite the fact that witnesses had been added to a postponement letter, and testified, without the Claimant being notified. Furthermore, the Hearing Officer permitted a principal witness to testify by telephone, depriving the Claimant of his right to face his accusers.

The Organization contends that the Carrier failed to produce substantial evidence of the Claimant's guilt. While the Claimant admits taking the trailer and lawnmower, he had permission to do so. Furthermore, the Claimant was authorized by law under a concealed carry permit to have his firearm in his vehicle and was therefore authorized by the Carrier's rules to have it on its property.

The Organization contends that the discipline assessed was excessive, as the Carrier failed to utilize progressive discipline to address the Claimant's conduct.

The Organization has raised procedural errors which demand attention. The first is that the Claimant was not given timely notice of the charges against him. Rule 35 (a) of the parties' Agreement states "Charges will be made in writing within ten days of knowledge of an offense." The Organization contends that the Carrier had knowledge of the Claimant's alleged offense on October 20 when CN police notified Youngman that the missing lawn mower and trailer had been located at the Claimant's residence. And yet, the Carrier did not notify the Claimant of the charges until October 31, more than ten days later. If the contractual violation is clear, the Organization need not prove specific harm, as the Carrier asserts. The harm occurred when the agreed upon contractual deadline was not met.

The Carrier responds that it was not able to finish its investigation until it spoke with the Claimant on October 28 and thus, the timeline began running on that day.

The Carrier asserts that the charges were therefore timely. In addition, there is no question that the Carrier was unaware of the Claimant's weapon being on the company's property before October 28.

The parties agreed that the Carrier would have ten days to investigate whether to charge an employee suspected of wrongdoing. There is no question that the Carrier was aware as early as October 17 of the missing lawn mower and trailer and that by October 20, the Carrier knew that they had been found on the Claimant's property. As a result, on October 20, the Carrier had knowledge of an offense committed by the Claimant and charges that the Claimant was responsible for the theft should have been brought no later than October 30. The Carrier's argument that the contractual time limit does not begin to run until the Claimant confessed his involvement is not persuasive. Nothing in the parties' Agreement suggests that this time limit will be tolled until the employee is interviewed.

There is some evidence that the Claimant failed to report to work from October 22 to October 28, thereby preventing the Carrier from confronting him. Despite this impediment to the Carrier's intention, the interrogation took place within the ten days. Nonetheless, the Carrier has failed to offer any explanation as to why it waited three more days before bringing charges against the Claimant, thereby passing the contractual time limit. The mandatory nature of the parties' Rule requires that this charge against the Claimant be dismissed as untimely. In light of this ruling, after review of the other procedural arguments raised by the Organization, this Board finds them to be nondispositive.

However, the Claimant was charged with two violations. The second incident occurred on October 28, when the Claimant gave his vehicle keys to his supervisor and the supervisor discovered that the Claimant had brought a loaded, unsecured weapon onto Company property. The charge for this violation was timely made.

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.

The Carrier has proved with substantial evidence that the Claimant kept a loaded and unsecured firearm in his vehicle which was parked on the Carrier's

property, the Claimant has admitted as such and when there is an admission of guilt, there is no need for further proof. The Claimant does not deny the facts, but argues that the Carrier granted permission to bring his firearm when it ordered him to the Carrier's property.

The Carrier's Code of Conduct prohibits firearms on Company property unless authorized by the Company, except for CN Police Officers or as authorized by law. Section II: Core Safety Rules, provides, in part, "Firearms or any weapons are prohibited on Company property unless *authorized* by the Company." In addition, the Carrier's Code of Conduct states, "Possession of a firearm is strictly prohibited while on CN property, except for CN Police officers or as otherwise authorized by law."

Neither the Carrier's summons nor State law provided authority for the Claimant to bring his firearm onto the Carrier's property. Clearly, the Carrier ordered the Claimant to its property. But there was no evidence that this order authorized him to bring his personal property that he was not otherwise permitted to possess there.

Although the Claimant was licensed to carry the weapon, that license does not authorize him to possess the weapon where it was otherwise prohibited. The Claimant was not a member of the CN Police and no one knowingly authorized him to carry the weapon on the Carrier's property. The Carrier has proved this violation.

The remaining question is whether the penalty of dismissal was too severe for the proven offense. The Carrier contends that its discipline policy classifies possession of firearms (or violence in the workplace) as a Level 4 infraction, for which dismissal is appropriate even for a first offense. Examples of Level 4 infractions include:

- Violence in the workplace
- Intentional acts that cause harm to other persons or recklessly endanger the safety of employees or the public
- Purposeful disregard for rules or policies

Certainly, the bringing of a loaded and unsecured firearm onto the Carrier's property in violation of several of the Carrier's rules could be characterized as any one of these infractions. After a careful review of the record, the Board is constrained to find that the penalty was neither harsh nor excessive.

**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 29<sup>th</sup> day of October 2021.**