

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44612
Docket No. SG-46134
22-3-NRAB-00003-200759**

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: (
(GRAND TRUNK WESTERN RAILROAD)**

STATEMENT OF CLAIM:

“Claim on behalf of A.S. Porter, for any mention of this matter to be immediately removed from his personal record with seniority and benefits unimpaired including monthly credits with the Railroad Retirement Board, and compensation for all time lost, including overtime, account Carrier violated the current Signalmen’s Agreement, particularly Rule 43, when it issued the harsh and excessive discipline of a 15-day actual suspension to the Claimant without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on June 5, 2019. Carrier's File No. GTWBRS-2019-00002. General Chairman's File No. 19-01-GTW. BRS File Case No. 16199-GTW. NMB Code No. 106.”

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 May 14, 2019, the Claimant was working for the Carrier in the position of Signal Technician on the South Bend Subdivision. The Signal Manager received a report regarding Claimant being out in front of the track foreman shunting the track in connection with signal work being performed by the Claimant. The Claimant had failed to first contact the track foreman, who was the Employee In Charge (EIC) prior to working in the joint limits.

The Claimant was interviewed at the Valparaiso Shop by a Carrier Manager regarding the current Operating Rules specific to joint track authorities. During the interview, the Claimant stated he was not aware of the rule requiring him to contact the EIC prior to performing service in the joint track authority. After the Claimant was questioned as to whether he was current on the Operating Rules, a review of the Claimant's Rule Book revealed the Claimant had not properly updated his Rule Book to display the current Rules, as required.

On May 17, 2019, the Claimant was given notice of an investigation in connection with the following charge:

... The investigation is being held to develop the facts and to determine your responsibility, if any, in connection with an incident that occurred at approximately 1400 CST hours on Tuesday May 14, 2019 in Valparaiso, IN, in which you allegedly failed to maintain an up-to-date rule book, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

After a formal investigation on June 5, 2019, the Claimant was found in violation of USOR (US Operating Rules) Rule 300-Books in Effect and was assessed fifteen days actual suspension without pay.

By letter dated July 23, 2019, the Organization presented a claim to the Carrier which was denied by letter dated September 3, 2019. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

Rule 300 states that each employee is responsible to obtain new rule books, timetables, and other documents when issued. The Carrier contends that the evidence conclusively shows that the Claimant was in violation of Rule 300 in connection with

his failure to maintain an up-to-date and properly revised Rule Book. The Carrier contends that these facts are not in dispute.

The Carrier contends that the Claimant knew or should have known the proper procedures for revisions. Although the Claimant claimed inadequate training, the Carrier presented evidence of his having received USOR Training just a few months earlier. The Carrier contends that this Rule is applicable across the entire property, regardless of division. Furthermore, in his previous position as a supervisor, the Claimant would have directed other employees to comply with this Rule.

The Carrier contends that the Claimant received a fair and impartial hearing. The penalty assessed in the instant case is appropriate and in accordance with progressive discipline. The Carrier contends that the current incident is properly classified as a Level 2 violation. The Carrier further contends that the discipline was neither harsh nor excessive.

The Organization contends that the Carrier failed to provide substantial evidence to support the charges and that the resulting discipline was both unwarranted and an abuse of managerial discretion. The Organization contends that conflicting statements were presented during the Investigation and yet the Carrier jumped to the conclusion that the Claimant was guilty.

The Organization contends that the Claimant made at most a minimal error, but Carrier's decision to suspend the Claimant was harsh and excessive. The Organization contends that the Carrier ignored the proper progression of discipline.

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 presented testimony that when Supervisor Gutierrez audited the Claimant's Rule Book, it was not up to date. The Carrier introduced a 21-page exhibit showing what was missing from the Claimant's Rule book. The Claimant testified that when he received rule updates he put them in his binder, as he was never instructed on updating his US Operating books. The Carrier presented evidence that the Claimant was trained on updating his rule book and that he was previously a supervisor. Therefore, the Carrier has presented substantial evidence of the Claimant's violation.

The remaining question is whether the discipline imposed was excessive. the Claimant was assessed a 15-day suspension for a first violation of a Level 2 Rule. Incidents that are classified as Level 2 include, “Failing to maintain an up-to-date rule book” and “Failure to maintain required documentation.” The penalty was within the parameters of the Carrier’s Discipline Policy and 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 29th day of October 2021.