

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44793
Docket No. SG-46503
22-3-NRAB-00003-210414**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Northeast Illinois Regional Commuter Railroad Corp.
(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.A. Gonzalez, for removal of the Formal Reprimand from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53, when it issued the unwarranted discipline of a formal reprimand to 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 October 2, 2019. Carrier's File No. 11-2019-42. General Chairman's File No. 02-D-19. BRS File Case No. 16506-NIRC. NMB Code No. 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.

Factual Background:

On September 9, 2019, while Claimant Gonzalez-Rueda was on his morning commute, there was heavy traffic due to an accident. Despite the heavy traffic, Claimant Gonzalez-Rueda felt that he would arrive to his regular assignment on time, so he made no attempt to inform his supervisor that he might be late. Claimant did not arrive to his assignment until 6:07 AM. NIRC's Code of Conduct Rule Q requires employees to report at the appointed time. Following investigation, the Claimant was assessed a Step 1 Letter of Reprimand for his tardiness. The Organization deemed this disciplinary action to be without just cause and protested it.

Position of Organization:

The Organization submits a procedural violation occurred, arguing that the investigation transcript was not delivered to the Organization until October 14, 2019. It maintains this was in violation of Rule 53 (c) which says: "A copy of the transcript of the investigation will be furnished the employee and his representative in no case later than the date decision on the investigation is rendered." In its view, this error was fatal in nature. It cites awards affirming its position and concludes that denial of the contractually mandated, timely access to the transcript is severe enough a contract violation to warrant remedy,

The Organization further maintains it was not reasonable for management to expect the Claimant to pull over and call his supervisor because all three lanes of traffic were affected by an accident. The Claimant testified that he knew he was near work and was focused on getting to work as soon as possible. In the Organization's assessment, this constitutes mitigating circumstances which the Carrier improperly failed to consider. It also points out that the Claimant worked seven minutes beyond his normal stopping time to make up for his tardiness.

Position of Carrier:

As to the Organization's procedural claim, the Carrier references PLB 5565 Award 85:

The record shows that the Claimant received his copy in timely compliance with Rule 53 but the transcript of the investigation was not received in the office of the Organization representative until April 10, 2003. In the absence of any showing that this was other than an isolated occurrence, that Carrier failed to utilize the transcript to make its disciplinary decision or that the Claimant and/or the Organization suffered actual harm or prejudice in appealing the discipline, we are not persuaded that this was a fatal procedural defect.

Management found no reason why the Claimant could not have pulled over and called his supervisor. It asserts the appropriate action was to pull over and call, and points out that the Claimant made no effort to do so. It concludes he was guilty of violating the Carrier's Code of Conduct and the discipline was proper.

Analysis:

Because the law abhors a forfeiture, the parties need to expressly state such a result when they intend it. There is an express statement of forfeiture when the Carrier misses specified deadlines, but no such intent of mandated forfeiture is expressed when the Organization's receipt of the transcript is delayed. The question, therefore, is whether the breach resulted in harm to the Organization in its ability to represent the Claimant.

The transcript was received five days after the Organization received the decision. There is no indication of any prejudice to the Organization's case as a result of the delay. It follows that there was procedural error, however it was not fatal to the Carrier's case.

The Claimant was stuck in three lanes of traffic due to an accident. If he had managed to pull over to call in his tardiness, he would have been even later to work, since he would also have to try to merge back onto back-to-back lanes. This makes his choice understandable. However, the rules are clear, and the Claimant's obligations to his employer are not conditioned upon variable circumstances. It is the employee's responsibility to anticipate problematic traffic and to notify management when (s)he will be late. The rule is clear and unconditional. Under these circumstances, the Carrier is within its rights to expect rule compliance.

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 19th day of September 2022