

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44794
Docket No. SG-46504
22-3-NRAB-00003-210415**

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 Rail 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.S. Quante, for removal of the 3-day deferred suspension from the Claimant’s 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 23, 2019. Carrier's File No. 11-2020-1. General Chairman's File No. 03-D-19. BRS File Case No. 16507-NIRC. 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.

Factual Background:

On August 13, 2019, Claimant Quante attended a safety meeting lead by her supervisor, Richard Moya, where she signed in and confirmed her attendance. The meeting agenda included a segment highlighting required online training that must be completed annually. The required training included Ethics, Title VI, and Sexual Harassment Training. The Claimant had completed similar training for her first two years of service. The deadline for completing the courses was August 31, 2019, but she missed the deadline. The Carrier gave her two extensions: September 15 and 22, 2019. However, the Claimant did not complete her training by those dates. As a result, the Carrier found her to have failed to follow instructions and issued the contested discipline.

Position of Organization:

Carrier's first procedural violation occurred before the Investigation Notice was served to the Claimant, violating Rule 53(B) which states:

Such investigation shall be held within ten (10) days from the date his immediate superior of the rank of at least Signal Supervisor has knowledge of the offense. Suspension pending investigation is not a violation of this rule; in such cases the investigation shall be held as promptly as possible but not later than five (5) days after date employee is withheld from service. Decision will be rendered within ten (10) days after date investigation is concluded. The employee and his representative will be advised in writing of the decision.

The Organization alleges the Carrier was beyond the ten days allowed to charge the Claimant, and seeks dismissal of the case.

The Organization also contends the Notice of Investigation was vague and failed to put the Claimant on notice of the allegations against her. In its view, a blanket statement that employees must obey and understand all rules fails to address what rules, if any, were deemed to have been violated.

The Organization highlights the lack of substantial evidence to prove the training was a topic of discussion at the meeting and argues the only date produced to support Carrier's assertion was the August 13, 2019, date. The Organization argues the

Carrier's mentioning "several extended dates given", was uncorroborated by any witnesses or evidence. It cites testimony indicating that the Carrier's witness had no knowledge of when the test/training was open or when it physically closed. The Organization emphasizes the Carrier's failure to provide the Claimant's supervisor Venegas as a witness. The Claimant testified she never received instructions from Venegas to complete the training. In its view, failure to call a such a witness constitutes denial of a fair and impartial investigation.

The Organization points out that the deadline for the testing was September 22, 2019, yet the Claimant was not charged until October 8, 2019. It maintains the time limits had expired for the Carrier to charge the Claimant.

The Organization protests that the discipline was completely unfair because the Claimant could not log in. She advised supervision of this but got no response or assistance.

Q. Did you ask Mr. Venegas if he could call somebody so you could log in and take the test? Like when you were -- when you received this notice that you didn't take the test, did you try to become compliant and couldn't log in, did you tell Rene, hey, I can't log in?

A. Yes, I did.

Q. Okay. And what did he say?

A. That nothing.

Q. There's nothing he could do?

A. That -- I actually let -- I actually let my foreman, Clark Barkley, and he said oh, I will let Rene know. And no one ever got back to me.

The Organization maintains the discipline was not proportional to the offense and was harsh and unreasonable. In its view, the Carrier should be required to remove the three-day record suspension.

As to remedy, the Organization requested that any mention of the matter be removed from the Claimant's personal record in accordance with Rule 54 --

Exoneration of the Agreement. Furthermore, the Organization requested Carrier reimburse it for all costs associated with the egregious violation, including preparation time for the Investigation, post-Investigation costs, postage, and total costs incurred, including, but not limited to, salary reimbursement for the Local Officers and mileage to and from the Investigation.

Position of Carrier:

The Carrier notes the Claimant first said she notified supervisor Venegas, then changed her testimony to say that she notified her foreman of her problems logging in. In its view, this change in testimony defeats her credibility.

It notes that on October 14, 2019, the investigation was postponed at the Union's request and the investigation was finally held on October 23, 2019. At the time of the investigation, the Claimant had still not completed her required training. The Carrier argues it only needs to present substantial evidence, and contends it has met this burden of proof.

Analysis:

The Claimant's supervisor Richard Moya testified at the investigation that the deadline for the Claimant to take the training was initially extended to September 15, 2019, then extended again to September 22, 2019. On October 8, 2019, the Claimant received a Notice of Investigation stating:

The purpose for this investigation is to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged failure to comply with the directives given to you by your immediate Manager, concerning the taking of the required annual courses as instructed (Title VI), with several extended deadline dates given, and as of this dated notice, you are still non-compliant.

The applicable procedural rule for processing the charges made against the Claimant states as follows in pertinent part:

RULE 53 – INVESTIGATIONS AND DISCIPLINE

(a) An employee who has been in the service more than ninety (90) days will not be disciplined or dismissed from service without a fair and impartial investigation, at which investigation he may be assisted by one or more duly accredited representatives of his own choosing. He will be advised in writing at least seventy-two (72) hours prior to such investigation of the exact charge or charges against him. At such investigation he shall have the right to call witnesses to testify in his behalf. His representative and Carrier representatives will have the right to cross-examine witnesses (those who testify) in support of the charges for and against the employee.

(b) Such investigation shall be held within ten (10) days from the date his immediate superior of the rank of at least Signal Supervisor has knowledge of the offense. Suspension pending investigation is not a violation of this rule; in such cases the investigation shall be held as promptly as possible but not later than five (5) days after date employee is withheld from service. Decision will be rendered within ten (10) days after date investigation is concluded. The employee and his representative will be advised in writing of the decision.

We find the charge was specific enough to permit the Claimant and her representative to prepare for the investigation. Though the initial notice of investigation failed to meet the contractual deadline, the hearing was postponed after that, establishing that the delay in holding the investigation was not harmful.

The Claimant's supervision changed on September 17, 2019, from Moya to Venegas. However, Supervisor Venegas was not called to testify at the investigation. The Organization maintains this constitutes denial of a fair and impartial investigation since he was her supervisor on the date her September 22, 2019, deadline expired. The Claimant testified that Supervisor Venegas never instructed her to complete the training. This testimony stands un rebutted and must therefore be taken as true. We do not find her credibility impaired by her testimony because she immediately clarified that she discussed the matter with her foreman.

Insofar as the Claimant's supervisor at the time of deadline expiration and charge did not instruct her to complete the training, she could reasonably conclude that

completion of this task was no longer important. It is true that she never complied with Supervisor Moya's instruction to complete the training. However, Moya's deadline expired under a different supervisor who never confirmed the instruction. Venegas gave her no indication whatsoever that he expected her to comply with Moya's instruction.

There is no surprise when a change in supervision brings about a change in expectations and priorities. When Venegas failed to confirm the instruction, the Claimant could reasonably conclude that the expectation of completing the training was no longer current. She had no opportunity to explain her problems with the portal and no warning that Moya's deadline was still valid.

In order for the Carrier to establish the charge of failure to follow instructions, it must demonstrate that the instruction was made, was readily understandable and was clearly communicated to the employee. It cannot meet this burden when it fails to establish that the Claimant's supervisor intended to enforce his predecessor's deadline.

Claim sustained. The Carrier shall remove the discipline from the Claimant's record, with seniority, vacation and all other rights restored. The Carrier shall make her whole for any time lost as a result of this incident, less any interim earnings from replacement employment. Lost overtime shall be compensated at the overtime rate. Any other claims not expressly granted by this Award are hereby denied.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of September 2022