

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44795
Docket No. SG-46642
22-3-NRAB-00003-210629**

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 P. Cole, for reinstatement to service 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, and reimburse all expenses incurred by the Organization involving the dispute, such as (postage, salaries, mileage, etc.) account; Carrier violated the current Signalmen’s Agreement, particularly Rules 13 and 53, 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 January 29, 2020. Carrier’s File No. 11-2020-10. General Chairman’s File No. 01-D-20. BRS File Case No. 16472-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 Saturday January 11, 2020, an NIRC dispatcher called Claimant at 12:15 AM and 2:29 AM (as a follow up to the first call) to travel to the malfunctioning crossing gate at the Beverly substation on 95th Street and take appropriate action. On each recorded call, Claimant acknowledged he would immediately go out and physically inspect the malfunctioning gate. In addition, he advised the dispatcher to lower the protection level of the crossing. However, instead of proceeding to the location, Claimant stayed home. In the Carrier's assessment, changing the protection level of the crossing without physically inspecting it first, represents a violation of the rules. At 11:05 AM, the Claimant phoned his supervisor to call off sick. On the call, the Claimant denied being contacted by the dispatcher.

The Claimant was charged with having allegedly violated the following Metra Signal Maintenance Inspection Test Instructions Rules:

1.3 G: Defective or damaged signal or interlocking apparatus or highway crossing apparatus that may endanger train or highway traffic movements must be immediately repaired or replaced if practicable. If it cannot be immediately repaired or replaced, its operation must be discontinued. The train and highway movements affected must be protected and the condition reported to the proper authority(s) by telephone or radio.

Engineering Special Instructions 1: ... All employees must be punctual, maintain a satisfactory attendance record, and cover their assignments as scheduled so NIRCRC/Metra can provide reliable and efficient service...

Metra Code of Conduct Rule "N" Item 4: Dishonest

Metra Code of Conduct Rule "Q" Paragraph 1: Employees must report at their appointed time and devote themselves exclusively to their duties. Employees must not absent themselves, nor exchange duties with or substitutes others in their place, without proper authority. Employees

are expected to work regularly and must not excessively absent themselves from duty.

The Carrier deemed this a severe offense worthy of dismissal. The Organization challenges this decision, arguing there were mitigating circumstances and the Carrier lacks adequate proof.

Position of Organization:

The Organization contests the dishonesty allegation based on the Claimant's testimony that when the dispatcher called, he was groggy from medication and was not yet awake. He should not be blamed for the effect of the medication he took. When he did awaken, he called in at work because he knew he was not coming in. He denied any memory of the taped conversation. There were no trains running on the track where the signal in question was located, hence there never was any danger to anyone and the Carrier's characterization of the offense is greatly exaggerated.

The Organization notes that the Claimant worked for fully three weeks before the investigation, and asserts this is proof that he was not considered either dishonest or a safety risk. When another maintainer checked the signal, it was found to be fully operational. In the Organization's view, a simple coaching session would have been adequate.

Position of Carrier

The Carrier maintains the Claimant has admitted to all charges:

Q. Did you receive a phone call from the dispatcher a little after midnight on the 10th of January regarding a gate malfunction on 95th Street on the Beverly sub?

A. I am officially aware of that now.

Q. Did you tell the dispatcher that you would be going to that crossing?

A. I'm also officially aware of that now.

Q. Did you go to the 95th Street crossing?

A. No.

Q. Did you tell the dispatcher to remove the item 1 on the grade crossing and replace it with an item 2?

A. From what I heard on that tape, yes.

Q. You're not disputing that?

A. According to that tape, I'm not disputing that.

The Carrier contends that the situation was egregious, with the Claimant representing he was taking care of a safety situation that was left untouched. Instead, he lowered the protection level in place. It views this as a very serious offense, impacting the trust it safely places in the employee in the future.

Analysis:

This Board is not persuaded that the Claimant can escape the consequences of his direct representations to the Carrier because he took medication that rendered him too sleepy to know what he was saying. Management must rely on the factual representations of its employees, and take action or inaction based on these facts. It is completely unfair to management to allow an employee to make a false representation regarding the safety of the railroad. This Board rejects any contention that the discipline should be mitigated due to the absence of an actual danger. Given the Claimant's groggy state, the Claimant could not have known whether or not there was a substantial safety risk.

If the Claimant decided he needed to take a medication which would render him unable to reliably respond, it was his responsibility to so advise management. He did no such thing. Instead, he represented to the Carrier that the signal in question was being addressed while he was asleep in bed, and even went so far as to reduce the protection at the site. The Carrier was within its rights to deem this a serious offense warranting dismissal. It has met its burden of proof.

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