

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34223
Docket No. SG-35113
00-3-98-3-865

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Railroad Signalmen**
(CSX Transportation, Inc. (former Chesapeake and Ohio
(Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O):

Claim on behalf of C.D. Nickel for reinstatement to service with his time served as a result of his dismissal being sufficient discipline, following an investigation held on January 23, 1998, account Carrier violated the current Signalman’s Agreement, particularly Rule 55, when it did not provide the Claimant with a fair and impartial investigation, and assessed harsh and excessive discipline against him. Carrier’s File No. 15(98-57). General Chairman’s File No. 93-03-CD. BRS File Case No. 10822-C&O.”

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.

This claim filed on February 24, 1998, protests as excessive the Carrier's decision to dismiss the Claimant from his position as Lead Signal Maintainer at Russell, Kentucky, for failure to protect his job assignment and falsifying payroll records.

An Investigation was conducted on January 23, 1998 under protest from the Organization due to the Carrier's failure to grant its postponement request on the basis of the Claimant having entered the EAP for emotional trauma and his lack of mental capacity to undergo a formal Hearing. At that Investigation it was established that the Claimant's supervisor, Frank Branham, could not reach him by radio on December 26, 1997 and could not locate him at his work location, so he drove to his home at 11:00 A.M. where he saw the Carrier's truck parked in the driveway. Branham solicited the help of a Special Agent and the Trainmaster on two other occasions that afternoon to witness the Carrier's truck in the Claimant's driveway. No one approached the home to see if the Claimant was there. The Claimant was relieved from duty pending Investigation on December 27, 1997.

The record reflects that it is common practice for employees at this location to fill out their weekly payroll sheets on Friday morning after they arrive at work and include time for a full days' work that Friday, despite the fact that they had not completed it at that time. The Claimant did this on Friday, December 26, 1997. It is also accepted practice for employees to make any adjustments to their time sheets the following Monday after they return to work. The Claimant testified that he was unexpectedly called away from work on December 26, 1997 by his ex-wife on an emergency matter that he had to attend to, and was unable to return that day. He was escorted from the property just after his arrival at 7:00 A.M. the following Monday, December 29, 1997, prior to having a chance to adjust his time record. There is no dispute that the Claimant was cooperative and not argumentative with the Carrier personnel on the occasion of his removal.

The Organization argues that the Claimant was not given a fair and impartial Hearing due to the denial of the postponement request, that the Carrier failed to prove any falsification of time records, that the penalty was not progressive for a 20-year employee with no prior disciplinary record and that dismissal was excessive. The Carrier contends that the Claimant received all his Agreement due process rights and understood the charges and was prepared to defend them, that the charges were proven, and that it was within the Carrier's prerogative to impose dismissal for this type of offense.

A careful review of the record convinces the Board that the Carrier failed to prove its charge of falsification of payroll records by substantial evidence. Rather, the evidence shows that the Claimant was acting in compliance with an accepted practice by recording his anticipated time on Friday morning, and was unable to correct that record in accord with normal procedure due to the Carrier's action in summarily removing him from service without requesting any explanation for his actions. Although the Carrier proved the Claimant failed to protect his assignment, removal for such a long term employee with a clean record is not in accord with accepted principles of progressive discipline, and is more punitive than corrective in nature. See Second Division Awards 10460, 8157, 7604.

Under the unique circumstances of this case, we find that it is appropriate to reinstate the Claimant with seniority unimpaired, but without pay for time lost, with time served as the appropriate discipline. Because the record reflects that the Claimant had entered the EAP at the time of the Hearing, his reinstatement will be conditional upon his securing an appropriate release from the EAP.

AWARD

Claim sustained in accordance with the Findings.

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 23rd day of August, 2000.