

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35077
Docket No. SG-34425
00-3-98-3-30**

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

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

STATEMENT OF CLAIM:

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

Claim on behalf of R. J. Oboczky for payment for all time lost as a result of his suspension from service from December 10, 1996, to January 10, 1997, following an investigation held on December 23, 1996, and for any reference to this matter to be removed from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50, when it did not provide the Claimant with a fair and impartial investigation within 10 days of the date of the charges and imposed harsh and excessive discipline against him without meeting the burden of proving the charges. Carrier’s File No. 15(97-54). BRS File Case No. 10480-B&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.

On December 12, 1996, the Carrier notified the Claimant, a Signal Maintainer, to appear for a formal Investigation to determine his responsibility, if any, in connection with Train D762-10 allegedly having been improperly operated from No. 2 Main Track to No. 1 Main Track and into the clear in the Yard at Ohio Junction at or near Milepost BG 79.5 at approximately 12:05 P.M. hours on December 10, 1996. The Claimant was withheld from service pending the Investigation.

After one postponement, the Hearing took place on December 23, 1996. On January 9, 1997, the Carrier notified the Claimant that he had been found guilty of the charges and was being assessed discipline of a 30 calendar-day suspension starting December 10, 1996, with a return-to-work date of January 10, 1997.

The Organization filed a claim on behalf of the Claimant challenging the discipline. The Organization argues that the discipline assessed was excessive, unfair, and not supported by the transcript of the Investigation, which the Organization argues it did not receive until January 21, 1997, and which did not contain any of the exhibits entered at the Investigation. The Organization contends that the charge letter did not state any Rule(s) that the Claimant allegedly violated and that the charges were vague. The Organization also maintains that the Carrier did not hold the Investigation within ten days of the date on which the Claimant was charged and, hence, the Carrier voided its right to take disciplinary action against the Claimant in this matter. The Organization argues that the Carrier initially scheduled the Investigation within the time limits, but then postponed the Hearing without reaching an agreement with the Claimant and his representative in violation of the Claimant's rights under Rule 50. The Organization also questions why the Carrier did not charge Track Foreman W. J. Sniezek although he approved the train movement in question and, in fact, even helped line the switches for the move. The Organization also argues that Train Dispatcher M. M. Brabham, Jr. gave the Track Foreman and the train crew permission to make the move in question and, therefore, the Claimant should not be held accountable for a move he was authorized to make. In addition, the Organization argues that the Train Dispatcher should not have been in the position he was assigned. In fact, the Organization argues that the Claimant's only involvement in this matter should have been as a witness, not as an employee charged with responsibility for what occurred. The Organization argues that the Claimant has 17 years of service with the

Carrier and there is no indication that he had ever been disciplined during that time; hence, the 30-day suspension can only be described as harsh and excessive.

The Carrier denied the claim contending that the Claimant's role in the incident on the date in question resulted in the occurrence for which he was held accountable. The Carrier also maintains that whether or not other employees were charged and/or disciplined as a result of the matter under investigation does not diminish the Claimant's role. The Carrier argues that the Claimant was afforded a fair and impartial Hearing and that the postponement was proper and necessary. The Carrier argues that the charge letters were also sufficiently clear and precise so as to enable the Claimant and his representative to prepare an adequate defense and that there is no particular time frame to furnish the transcript. The Carrier also maintains that its decision to discipline the Claimant was in the interest of safety to its property, the public, and its employees.

The Board reviewed the procedural arguments raised by the Organization and finds them to be without merit.

The Board reviewed the evidence and testimony in this case and finds that the Carrier failed to present sufficient evidence to support the finding that the Claimant was guilty. The record reveals that on the date in question, the signal system was not operating properly and the employees were hand-throwing switches. The record reveals that the Claimant only performed the task that another employee ordered him to perform. In other words, the Claimant was simply following orders. The Track Foreman who gave the Signaller the order to throw the switch never was charged. Although the Train Dispatcher was charged, following the Investigation the Carrier found that he was not responsible and he was returned to service and paid for all time lost.

In order to sustain discipline issued to an employee, the Carrier must present substantial evidence to support a guilty finding. In this case, the Carrier simply failed to present sufficient evidence to show that the Claimant violated any Rules on December 10, 1996. Therefore, the claim must be sustained.

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 15th day of November, 2000.