

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13169

Docket No. 13017

97-2-95-2-41

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(International Brotherhood of Electrical Workers
(System Council No. 9

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Baltimore &
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"1. That CSX Transportation, Inc., formerly B&O, in violation of the controlling Agreement, particularly Rule 32., unfairly disciplined Electrician C. J. DeMillo with a ten (10) day actual suspension as a result of a hearing held on November 17, 1993, and accordingly:

2. That CSX Transportation, Inc. now remove the discipline imposed, compensate Electrician DeMillo for all lost time and expunge his record of all mention of this matter."

FINDINGS:

The Second 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.

In response to a call from an Engineer having difficulty with his locomotive, the Yardmaster directed a Lead Machinist to investigate. The Lead Machinist directed the Claimant, an Electrician, to accompany him. Both the Machinist and the Claimant entered the locomotive cab.

At this point, it was noted by an FRA Inspector that blue flag protection had not been provided for the locomotive while it was being examined and repaired. The Claimant was subjected to an Investigation and thereafter received a disciplinary notice reading in pertinent part as follows:

"You were charged with responsibility in connection with your failure to use Blue Flag Protection while working on Locomotive CP 6044

...

It has been found that you were guilty as charged and the discipline administered is ten (10) actual working days suspension. Your record is being marked accordingly."

The record notes that the Machinist, who had been charged for the same offense, waived his right to an Investigation and received a ten day actual suspension.

The FRA "blue signal" regulation of which the Claimant was found guilty refers to "Workmen on Track Other Than Main Track" (emphasis added). The Organization's principal defense for the Claimant is that, while he was in the locomotive, he was not "working", but simply observing. Contrary to this, the Carrier points out the FRA citation states the Claimant "was observed in the locomotive cab checking in the electrical cabinet." In addition, the Board finds that whether the Claimant was "taking a look" or actually making an electrical adjustment, he was certainly on duty and aware of the necessity of blue flag protection.

The Carrier cites numerous denial Awards where disciplinary penalties, many far in excess of that here under review, have been assessed in connection with blue flag violations. As to the responsibility of each member of a mechanical team, Second Division Award 11369 states:

"... the Organization's argument that Claimant's failure to display the signal should be excused because he was generally working as part of a group and consistent with prior practice the first person working on the

unit (usually a laborer) was to display the signal, must be rejected. The Rule is clear on its face and under the circumstances . . . the responsibility for displaying the signal belonged to Claimant while he was individually working on a unit requiring a blue signal.”

The Claimant here was under pay, on duty, and -- in any other circumstance -- would surely resent an accusation that he was not “working” at the time, even if he had no tools in hand. In pursuance of safety concerns as well as necessary compliance with FRA requirements, the Carrier may not be faulted in its judgment here.

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 Second Division**

Dated at Chicago, Illinois, this 29th day of October 1997.