

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29290
Docket No. SG-29790
92-3-91-3-152

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro 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 CSXT, Inc. (B&O):

Claim on behalf of J. L. Couch, for rescission discipline and all lost time and benefits restored, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 50, when it failed to find him guilty as charged." Carrier's File No. 15 (90-25). BRS Case No. 8305-CSXT.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 employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The Claimant is classified as a Signal Maintainer, and he is stationed at H.N. Tower, Illinois. On September 30, 1989, a CSX train reported that Signal 14-E displayed a false clear aspect even though a Conrail train occupied the interlocking where the two rail Carriers intersect. A "false clear" is a signal failure or malfunction that results in the display of a "clear" indication even though the track ahead is occupied by a train. In this case, the cause of the signal failure, a false clear, was later determined to be a terminal washer that had apparently fallen between the binding terminals on a relay bridging two (2) circuits. The improperly energized circuit in turn caused the 14-E signal to improperly display a clear signal.

In a letter dated October 23, 1989, the Carrier advised the Claimant of an Investigation in connection with the following charge:

"You are charged with your responsibility, if any, in CSX Train R372, engine No. 7235 reported to the Operator, H. N. Cabin, that the Eastbound signal, No. 14E, was clear and the Conrail train, Engine No. 6396, was occupying the track that crosses the CSX Main, September 30, 1989.

The cause of this False Clear signal was determined to be that a terminal washer had fallen across the terminals of 7H and 8H putting energy coils of the 10 EUR Relay causing signal 14E to clear, violation of CSX Transportation Signal Rules and Instructions Rule No. 1.233 and Rule No. 1.235."

Following an Investigation on December 6, 1989, the Carrier determined that the Claimant was guilty, and the Employer assessed ten (10) days of actual suspension.

The Brotherhood asserted the Carrier violated the Agreement by suspending the Claimant in connection with an unsustained charge. The Brotherhood noted the Carrier must prove its allegation with substantial evidence; suspicion and speculation are not sufficient.

The Brotherhood maintains the Carrier violated the Agreement, Rules 50 & 52, when it failed to sustain its burden to prove that the Claimant was responsible for the signal failure on September 30, 1989. The Brotherhood argues the Carrier failed to prove the Claimant was responsible for the washer bridging the two circuits, either by his own action or by his negligence. The Brotherhood contends the Carrier lacked proof that the Claimant failed to keep his housing in orderly condition. The Brotherhood also noted the location of the washer between the relay terminals was not apparent as it took the Supervisor with the assistance of the Claimant and other employees nearly twelve hours to locate the problem. The Brotherhood noted the instrument housing was congested and poorly lit, and these conditions certainly contributed to the difficulty in locating the washer following the incident and may have contributed to the washer going undetected prior to the incident.

The Carrier maintains it sustained its burden of producing substantial evidence of the Claimant's guilt. In support of this contention, the Carrier cited the Claimant's own testimony and the testimony of the Supervisor of Signals.

The Carrier argued the Claimant was afforded a fair and impartial Hearing in accordance with Agreement Rule 50. The Claimant was given proper notice of the charges, sufficient time to prepare a defense, the opportunity to produce and examine evidence, and the opportunity to present and cross-examine witnesses. This afforded the Claimant due process in accordance with Rule 50 and the standards embodied in prior Awards.

The Carrier contends the discipline assessed in this case was fully justified not harsh, excessive, or unfair. The Carrier notes a false clear indication is a malfunction that can result in dire consequences in the loss of life and property damage. So in view of these dire consequences, a ten (10) day suspension is lenient.

With respect to the substantive charge, this Board finds that there is sufficient probative evidence in the record to establish that the Claimant is guilty of the charge against him.

With respect to the disciplinary action, the Board will not set aside discipline imposed by a Carrier unless it is unreasonable, arbitrary or capricious. Third Division Award 26160. But certain factors in this matter and in Claimant's past record serve to mitigate the discipline imposed by the Carrier. Third Division Award 26844.

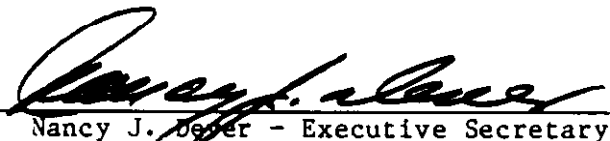
In this case, the factual circumstances, including the difficulty in correcting the problem, indicated that other factors, besides the Claimant's own acts, contributed to the false clear signal. In addition, the Claimant has a history of long term service with an unblemished record. Therefore, although a suspension is warranted, this Board recommends the suspension be reduced from ten (10) days to five (5) days with all appropriate compensation and benefits restored.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.