

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30847
Docket No. SG-31381
95-3-93-3-420

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company, Inc. (former Seaboard Coast Line Railroad):

Claim on behalf of T. S. Hugo for compensation for time lost as a result of disciplinary suspension of 30 days, and removal of discipline from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 47, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline without meeting its burden of proving the charges against the Claimant." Carrier's File No. 15(92-51). General Chairman's File No. 23/RS&I/92. BRS File Case No. 9141-SCL.

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 waived right of appearance at hearing thereon.

Claimant is a Signal Maintainer headquartered at Tampa, Florida. He performed signal work inside the signal controller case for the Platt Street crossing on July 24, 1992. After a train crew reported the crossing gates inoperative on July 26, 1992, an inspection the following day revealed an inverted "XR" relay inside the controller case. Claimant was assessed a 30-day suspension following Carrier's Investigation.

The Organization contends that Claimant did not receive a fair and impartial investigation, that Carrier did not prove the charges against Claimant, and that the punishment was harsh and excessive under the circumstances. In support of these contentions, the Organization notes that the Carrier's evidence is entirely circumstantial regarding Claimant's culpability, and that an employee involved in a similar incident received only a 3-day suspension.

Although Claimant denied performing any work on the side of the controller case that contained the XR relay, one of his jumpers was found on that side of the case during the July 27, 1992 inspection. In addition, Carrier records showed that no other signal employees performed any work on the Platt Street crossing between the time when Claimant worked in the case and the discovery of the inverted relay. The record contains no evidence of tampering with or vandalism to the controller case.

Although the evidence in this record is, as the Organization contends, circumstantial, it is substantial and provides strong support for the Carrier's determination of Claimant's guilt. As this Board has noted many times, appropriate circumstantial evidence can establish the basis for disciplinary action. See, for example, Third Division Awards 26904, 26435, and 20781.

The Organization's contentions regarding disparate treatment are without merit on this record. The undisputed evidence shows that signal employees, including Claimant, were previously informed that relays were not to be inverted under any circumstances. Rather, they were to be jumpered in a manner that prevented the case from being inadvertently closed with the jumper in place. In addition, the record does not establish that the other employee, who received a 3-day suspension, was guilty of inverting a relay. Rather, the record suggests that he properly jumpered a relay, but failed to properly take measures to protect the crossing while the gates were inoperative. This claim must, accordingly, be denied.

Form 1
Page 3

Award No. 30847
Docket No. SG-31381
95-3-93-3-420

AWARD

Claim denied.

O R D E R

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 27th day of April 1995.