

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32181
Docket No. SG-32553
97-3-95-3-455**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Houston Belt & Terminal Railway Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Houston Belt & Terminal Railway (HBT):

Claim on behalf of L. Kuykendall for compensation for all time lost as a result of his suspension from service for 20 days beginning October 18, 1994, and for his record to be cleared of all charges in connection with this discipline, account Carrier violated the current Signalmen's Agreement, particularly Rule 700, when it did not provide the Claimant with a fair and impartial investigation and assessed discipline against him in this matter without meeting the burden of proving its charges. General Chairman's File No. 94-57-H-D. BRS File Case No. 9689-HBT."

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.

The Claimant is a regularly assigned Signal Maintainer with approximately 16 years of service with Carrier. On October 16, 1994, Carrier's Engine No. 62 received authority to move through South Yard which involved passing through a number of signals and power switches. As the engine was completing its movement, the power switch at CP 169 realigned against the movement. The switches at CP 169 are in Claimant's assigned territory.

Under date of October 19, 1994, Carrier issued the following notice to Claimant

"Report to the Conference Room 300, Houston Belt & Terminal Railway Company, Union Station Building, Houston, Texas at 10:00 a.m., October 25, 1994 for a formal investigation to develop facts and place your responsibility, if any, in connection with the report that you allegedly failed to properly perform your duties when power switch numbers 8 and 10 (CP 169) realigned while engine no. 62 was in the block at approximately 11:35 a.m. on October 16, 1994, while you were assigned to this area as Signal Maintainer.

You are being withheld from service pending the formal investigation.

Bring any witnesses desired by you and representation as permitted by your current working agreement."

Investigation was held as scheduled, and on November 3, 1994, Carrier advised Claimant that his record had been assessed with 20 days actual suspension for failure to properly perform your duties "when power switch numbers 8 and 10 (CP 169) realigned."

Claimant's suspension was appealed by the Organization to Carrier's highest designated officer to receive such appeals but was unable to reach satisfactory resolution of the dispute. Claim is now properly before this Board for adjudication.

Study of the Investigation transcript convinces this Board that Carrier failed to prove with substantial evidence its charges that Claimant failed to properly perform his duties.

Carrier asserts that Claimant failed to properly perform maintenance, but nowhere in the record before this Board does it indicate that any problems were experienced with switches 8 and 10 (CP 169) prior to the incident on October 16, 1994. Further, the record contains no evidence of Claimant performing any work to switches 8 and 10 (CP 169) immediately prior to the incident on October 16, 1994. Accordingly, the assertion of improper wiring by Claimant is shown to be without merit.

The record before the Board does reveal that Claimant was negligent in filing his monthly and quarterly test reports. The record also reveals that Carrier's Signal Maintenance Foreman was also negligent in not requiring Claimant to file his monthly and quarterly test reports on time.

In the Investigation, Claimant testified that he had made the required tests but just did not write them up and file them. Further, he testified that he had notes in his truck on the switches tested on which he had to file reports.

The record does not reveal that Carrier took issue with Claimant's testimony or pursued further the question of whether Claimant had performed the required monthly and quarterly test. Accordingly, this Board concludes that Carrier was satisfied that the required tests were performed.

The claim will be sustained, but Claimant is put on notice that his monthly and quarterly test reports must be timely filed. Failure to do so will be at his peril.

AWARD

Claim sustained.

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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 13th day of August 1997.