

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33385
Docket No. SG-34753
99-3-98-3-438

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

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Baltimore
(& 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 J. W. Martin and E. T. Frazier for payment of all time lost as a result of their respective suspensions from service and for any reference to this matter to be removed from their records, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50, when it failed to provide the Claimants with a fair and impartial investigation, did not render a written decision in this matter within 30 days after the completion of the investigation, and imposed harsh and excessive discipline without meeting the burden of proving its charges in connection with an investigation conducted on May 22, 1997. Carrier’s File No. 15(97-144). BRS File Case No. 10565-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.

Claimant J. W. Martin was employed as a Signal Maintainer working an independent assignment. Claimant E. T. Frazier was employed as a Signal Construction Foreman working with and in charge of a six-man signal gang. Both men were working at the same job site on May 12, 1997, along with a Tie and Surfacing Gang. During the course of the work day, jumper cables were placed on a crossing signal device at Clinton Avenue in Tiffin, Ohio, thereby preventing the crossing signals from operating in a normal manner. When the work crews closed operations on May 12, the jumper cables remained in place. In the early hours of May 13, acting on a police report of non-working crossing signals, the Maintainer then on duty was dispatched to the scene where he detected the jumper cables still attached to the crossing signal device, removed them and re-activated the crossing signals.

As a result of this incident, both Claimants were withheld from service pending an Investigation of the matter. By notice dated May 20, 1997, both Claimants were instructed to appear for a formal Investigation to be held on May 22, 1997, "to determine the facts in connection with a grade crossing warning system activation failure which occurred at or around 2100 hours on May 12, 1997" The Claimants appeared as instructed. Both Claimants were represented and testified on their own behalf. Following completion of the Hearing, the District Signal Engineer wrote to the Claimants on June 22, 1997 and notified them as follows:

"You were instructed to attend a formal investigation on Thursday May 22, 1997 at the YMCA, 302 Woodland Ave., Willard, Ohio 44890, phone 419-933-6501 at 0900 hours, to determine the facts in connection with the Grade Crossing Warning System Activation Failure which occurred at or around 2100 hours on May 12, 1997 at B 123.8, on the Willard subdivision at Clinton St., in or around Tiffin, Ohio.

You were charged with violation of rule CSX Train Control Rules 1.209, 1.305 and F.R.A. rules 234.105, 234.209, 234.259.

You are suspended for a period of 20 working days starting from the date you were removed from service, May 14, 1997. You may return to work immediately. You are eligible to receive any lost compensation of straight time after June 11, 1997 you experienced as a result of being held out of

service. Upon your return to work, you must complete a return to work safety course which will be set up by your supervisor.”

In its handling of this case both on the property and before the Board, the Organization argued that not only had the time limit for handling discipline been violated by the Carrier, but also that the charges as made have not been substantiated by convincing evidence. Of course, the Carrier insists that the time limit requirements had been complied with and that the evidence adduced at the Hearing supports the action taken.

On the issue of timeliness, the Board must consider the language of the negotiated Agreement Rule that reads, in pertinent part, as follows:

**“RULE 50
DISCIPLINE - INITIAL HEARING**

(a) An employee who has been in the service more than thirty (30) days will not be disciplined or dismissed without a fair and impartial hearing, at which hearing he may be assisted by one or more duly accredited representatives. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. The employee will be advised in writing at least forty-eight (48) hours prior to such hearing of the exact charge or charges made against him. At such hearing he shall have the right to call witnesses to testify in his behalf and he and his representatives shall have the right to cross-examine witnesses who are used in support of the charges.

(b) The hearing will be held within ten (10) days of the date when charged with the offense. A written decision will be rendered within thirty (30) days after completion of the hearing. If discipline is assessed, the decision will state the reason therefor.” (Emphasis added)

As noted above, the record reveals that the notice of discipline was dated June 22, 1997, which is 31 calendar days “after completion of the hearing.” The Organization by letter faxed to the Carrier on June 30, 1997, informed the Carrier that it had not yet received notice of the Carrier’s decision. The Carrier, by letter dated June 30, 1997, responded to the Organization advising that the notice of discipline had, in fact, been

issued on June 22, 1997, and supplied the Organization with a copy of the notice. During the subsequent on-property handling of this dispute, the Organization acknowledged that the notice of discipline had been received in an envelope postmarked June 28, 1997.

The issue of time limits as found in Rule 50 has been a source of divided opinion over the years with no clear, definitive resolution ever having been reached. Unlike time limit Rules applicable to penalty claims that generally contain language which clearly indicates that a violation of such limits will automatically result in sustaining the claim as presented, no such automatic language is found in Rule 50 quoted supra. There is a substantial line of authority dealing with discipline Rules such as is present here which holds that "Agreements of this kind regulating the employer-employee relationship must be given a reasonable, workable construction and not construed so narrowly as to defeat justice" (Second Division Award 2466). The Board believes that in this case there was no prejudice done to the Claimants by the one day delay and that the rationale of Award 2466 should apply in this case.

Here there was a work-related incident that took place. The incident could have had serious consequences. Prompt action was taken to remove from service the employees who were suspected of being directly involved in the incident. A prompt Hearing was held. Extensive testimony was taken that included evidence that the Carrier recognized the potential for error in instances such as this. To prevent recurrences of this type, the Carrier on May 21, 1997 - one day before the disciplinary Hearing was held - issued "Instructions for Employee Disabling Crossings." These instructions set forth a detailed checklist to be followed in such situations. However, the Hearing record contained less than convincing, substantial evidence to prove that either of the Claimants was directly responsible for the situation that occurred on May 12, 1997.

It is the Board's conclusion that the burden of proof that is the Carrier's to meet in discipline cases has not been met in this particular case. The claim as presented is, therefore, sustained.

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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 13th day of July 1999.