

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33611  
Docket No. MW-34358  
99-3-97-3-976**

**The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.**

**(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(Terminal Railroad Association of St. Louis**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline [withheld from service and subsequent sixty (60) day suspension] of Foreman L. Guion, for alleged violation of Terminal Railroad Association of St. Louis Rules ‘A’, ‘K’ and Operating Rule 662, was arbitrary, capricious, unwarranted, without just and sufficient cause and in violation of the Agreement (System File 1997-1/013-30).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”**

**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.**

On December 3, 1996, the Claimant was the Foreman in charge of overseeing a tie installation project being performed by a contractor at the West Approach, Bremen leg of the Merchants Bridge on the westbound main line, St. Louis, Missouri. During the course of the work, two contractor machines working on the track passed through a red signal. As a result of this incident, the Claimant was removed from service pending Investigation. A Hearing was held on December 11, 1996, and the Claimant was subsequently assessed a 60-day suspension.

This Board notes at the outset that the Organization has raised certain procedural objections which must be rejected. The Claimant was afforded a fair and impartial Hearing and the Notice of Investigation was sufficient to apprise the Claimant of the charges against him and to allow him full opportunity to prepare his defense. We find no defect in the procedural aspects of this case which would serve to vitiate the discipline imposed.

Turning to the merits, the Board finds that there is sufficient evidence on this record to support the finding that the Claimant was guilty of the misconduct charged. The Claimant admitted that he was responsible for permitting equipment to pass through a red signal when initially confronted at the scene and during the Investigation. Roadmaster Goodwin, who spoke with the Claimant shortly after the incident, testified:

“[Claimant] says - Henry, it’s my fault. I waved the equipment past the signal. I did it myself. It’s my fault. I’ll take the responsibility. . . And he [Claimant] says, I waved them past the signal. I don’t know why I did it, but I waved them past. . .”

Director of Transportation Hurt testified that he too spoke with the Claimant shortly after the incident at which time the Claimant told him:

“He [Claimant] said I’m responsible. They got by the signal. I’m the foreman in charge and I’m responsible for what happened. Nobody else is responsible. . . He said he observed the equipment coming up the bridge and he continued to talk to the people that were working on the west bound main and he said he didn’t pay any attention, and before he knew it, they were by the signal. And he said again that he told me that he was the foreman in charge of the gang. That he was responsible.”

When asked whether he agreed or took exception to the foregoing testimony concerning his conversation with Director Hurt, Claimant responded, "No sir, I do not take exception to that." The Claimant further testified that he may have used a "poor choice of words" when he told Roadmaster Goodwin that he waved the contractor's employees past the signal. The Claimant explained that he did not affirmatively motion the employees to go past the signal; rather, the Claimant had been distracted by other events taking place and did not notice that they had gone past the stop indicator.

Regardless of whether the Claimant waved the equipment past the signal or through inattention failed to notice that the equipment had gotten past the signal, the Claimant admittedly was responsible for the safe operation of the equipment on the track. Notwithstanding the Organization's arguments to the contrary, once the Claimant's admission was in the record, it was unnecessary for the Carrier to call other witnesses to the incident in order to meet its evidentiary burden of proof. Absent any conflicting testimony in the record or opposing evidence, it cannot be said that the Carrier erred in not presenting other witnesses to the occurrence.

Concluding as we do that the Claimant was derelict in his job responsibilities, the remaining question centers around the reasonableness of the penalty imposed. Based on our review of the record, we find no basis for disturbing the discipline assessed in this case. The Organization argued that assessment of a 60-day suspension was arbitrary, capricious and excessive, particularly since the Claimant is a long-term employee with an unblemished record. The countervailing argument, however, is that the Carrier views the Claimant's action (or inaction) as a most serious offense. It must be acknowledged that there are few responsibilities more important in the railroad industry than insuring that red stop signals are obeyed. Having examined the precedent Awards cited by the parties, we find that the Carrier's position has been upheld and stiff penalties meted out for similar operating offenses. See Award 18, Public Law Board No. 4048 (upholding a 120-day suspension for running through a switch); Award 9, Public Law Board No. 4977 (sustaining a 45-day suspension plus disqualification of a tower operator); Award 24, Public Law Board No. 4048 (denying the claim protesting a 90-day suspension). The role that the Claimant plays as Foreman in overseeing the safe movement of equipment on live track is crucial. While we admire his candor in admitting responsibility, and recognize that he is a valued employee with a good work record, those facts alone do not support the imposition of a lesser form of discipline given the seriousness of the offense.

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**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 Third Division**

**Dated at Chicago, Illinois, this 16th day of November 1999.**