

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34167
Docket No. SG-35371
00-3-99-3-236

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

Claim on behalf of A.M. Arias, for payment of all time lost, as a result of a 30 day suspension and for any reference to this matter to be removed from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 40, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline without meeting the burden of proving its charges in connection with an investigation conducted on December 12, 1997. Carrier’s File No. 1127761. General Chairman’s File No. 72404989.1. BRS File Case No. 10939-UP.”

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.

From the Board's review of the Hearing record in this case, it is apparent that the Claimant, while probably well intentioned, created a potentially hazardous condition when he altered a switch/signal arrangement which had been displayed as a stop signal to show a clear signal over a switch which had been previously damaged and had not yet been completely repaired. The Hearing transcript establishes by probative evidence that management representatives had, in fact, requested the Claimant to get the signal cleared. However, the actions taken to get the clear signal displayed in the manner in which this action was accomplished were the Claimant's own actions and that is what resulted in the creation of the potentially hazardous condition.

The Organization's arguments relative to the wrong charge notice appearing in the finished product of the Hearing transcript and the contention relative to the Hearing Officer rendering the decision to discipline are not persuasive. It is apparent that, when the Hearing record was transcribed, the transcriber erred when a different charge notice was included in the Hearing transcript record. This clerical error did not in any way prejudice the Claimant, nor did this alter in any way the direct testimony as found in the Hearing record all of which relates and refers to the situation which was under Investigation and which formed the basis of the discipline as assessed. In fact, both the Claimant and his representative answered in the affirmative when asked in the Hearing record if they had been properly notified of the charge and were ready to proceed with the Hearing.

As to the Organization's position relative to the Hearing Officer issuing the notice of discipline, the Board finds no reversible error in such a procedure, nor has any showing been made by the Organization that such an arrangement in any way prejudiced the Agreement due process rights of the Claimant.

On the totality of the evidence and testimony as found in the case record, there is no basis to support a reversal of the action taken in this instance. The claim as presented is therefore denied.

AWARD

Claim denied.

Form 1
Page 3

Award No. 34167
Docket No. SG-35371
00-3-99-3-236

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 20th day of July, 2000.