

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35417
Docket No. MS-34080
01-3-97-3-621**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(William J. Farmer
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“This is to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board, effective May 16, 1994, of my intention to file an Ex Parte Submission within 75 days covering an unadjusted dispute between me, William J. Farmer, and Conrail, involving the following:

I, William J. Farmer, was put on trial on March 20, 1996, for violating rules which resulted in the dropping of signals 412-23 and 399-IW at Goshen, Indiana, to red. I did not violate any of those rules and the carrier (Conrail) did not meet its burden of proof. It is my claim that I did not get a fair and impartial trial. I want the guilty finding set aside and i want reimbursement for all lost wages for time lost and the difference in pay lost during the time of my demotion.”

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.

Pursuant to a notice issued on February 26, 1996, the Claimant was directed to attend a trial on charges of violating Rules C&S 23, R2-7-83, 51, Safety Rule 67.2 and NORAC Operating Rule 132 with respect to dropping signals to red in front of trains MAIL 8M and Amtrak No. 49 on the morning of February 20, 1996 while testing relays at Goshen, Indiana.

A Hearing was conducted on March 20, 1996 wherein the Claimant and his Supervisor Charles Haldi testified. The record reflects that the Claimant admitted responsibility for dropping the two signals to red in front of the noted trains both at the Hearing and to the Dispatcher over the radio that morning after being alerted to the incidents in question. The Claimant, a Signal Maintainer - Test with 26 years service, testified that when he opened the test nut for what he thought was the BPR, which he understood would affect the circuits on Track 1 only for which he had obtained time from the Dispatcher, he really opened the BPAR, thereby affecting the signal on Track 2, dropping it in front of MAIL 8M. The transcript of the radio tape from the morning of February 20, 1996 reveals that the Claimant immediately informed the Dispatcher that he had caused the signal to drop, and the train did not have to make an emergency stop.

The Claimant also admitted that just over one hour later he was working on a relay with time obtained from the Dispatcher on Track 2, when his work caused a signal to drop in front of Amtrak No. 49 on Track 1, who reported it to the Dispatcher. The Dispatcher alerted the train that it was probably the Maintainer working there and the train proceeded without incident. Again the Claimant contacted the Dispatcher by radio indicating that he was working only on a Track 2 relay, but would look into the matter. Approximately ten minutes later the Claimant informed the Dispatcher that he had discovered the problem, which was procedural in that he was not aware the two relays worked together, and that he had solved the problem which would not occur again.

At the trial, the Claimant testified that he was unaware that the BPAR and BPR relays worked together at the time of the first incident and did not discover this until after the second occurrence. He stated that he had checked that all of the circuits going through the contacts in the relay were for only one track, but that he should have looked on the relay sheets for control over BPAR and BPR relays and he would have known to obtain time on both tracks when testing either of them.

At the trial Supervisor Haldi testified at great length about the lack of care exercised by the Claimant, the possible drastic consequences of his actions, and made broad sweeping statements about the Claimant's incompetence and serious Rule violations. When shown each paragraph of the cited Rule violations, he was forced to admit that there was no evidence that the Claimant violated paragraphs 1, 3, 4, 5, 6, 7, and 8 of Safety Rule 67.2, which were not applicable to his situation, but insisted that his actions prevented the Dispatcher from observing Rule 132, thereby violating the section of the Rule directed to Dispatchers and Operators only. Throughout the Hearing the Organization and the Claimant objected to the Hearing Officer permitting Haldi to make broad sweeping statements about the Claimant unrelated to the charges, and not restricting the evidence to the matters in issue, and permitting character assassination of the Claimant to his prejudice. It claimed that the Hearing was neither impartial nor fair.

The Carrier found the Claimant guilty of all charges against him and assessed him a 41 day suspension as well as a one year disqualification from all BRS classifications higher than Signalman. The basis of the claim filed initially by the Organization is the Carrier's improper prejudgment shown by the unfairness of the Hearing.

In his appeal of the discipline issued to him the Claimant explained that the BPAR relay was incorrectly tagged and wired, since standard plans provide for relays to be wired in parallel, but these were wired in series with incorrect tagging. He took issue with Haldi's characterization of him as being ignorant, insisting that he had every right to expect the relays to be tagged correctly. He noted the absence of this fact having been brought out at the Hearing by the Carrier and alleged that Haldi had not complied with his Supervisory responsibilities as required by Rules C&S 23 and 12.

A careful review of the record convinces the Board that, despite many inappropriate comments by Supervisor Haldi at the Hearing and his attempt to clutter the record with broad statements that went beyond what was necessary to the issue presented and understandably offended the Claimant and his representatives, we can find no support for the conclusion that the Claimant was denied a fair and impartial Hearing. The Claimant was clearly given the opportunity to explain what occurred on February 20, 1996 and to dispute what Haldi said. Based upon the Claimant's own admissions, there is substantial evidence in the record to support the conclusion that he was at fault with respect to dropping the two signals in front of the trains, which is a

clear violation of Rule 51, Safety Rule 67.2 (paragraph 2), and the first two paragraphs of NORAC Operating Rule 132. See, Third Division Awards 20250 and 32004. This is true despite the fact that neither train was required to come to an emergency stop and that no one was injured.

The Carrier based its determination of the appropriate discipline, in part, on the fact that the unsafe practice was repeated twice within a brief period of time and that, after the first incident, the Claimant should have discovered that testing those relays required clearance on both tracks. Further, the Carrier also considered the possible consequences of such unsafe practice in assessing discipline, a factor which is appropriate regardless of whether those consequences come to fruition. Based upon the entire record, we cannot find that the discipline imposed was arbitrary or excessive.

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 26th day of April, 2001.