

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35429
Docket No. SG34892
01-3-98-3-608**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O):

Claim on behalf of G. B. McVey for reinstatement to service with payment for all lost time and benefits 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 55, when it failed to provide the Claimant with a fair and impartial investigation and imposed the harsh and excessive discipline of dismissal from service against the Claimant without meeting the burden of proving its charges in connection with an investigation conducted on October 7, 1997. Carrier's File No. 15(97-215). General Chairman's File No. 97-113-CD. BRS File Case No. 10621-C&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.

In August 1997, the Federal Railroad Administration (FRA) inspected the Carrier's signal system throughout the state of Michigan. The FRA noted several maintenance deficiencies. This caused District Supervisor D. M. Zink to review the records of recent signal system tests performed by employees under his supervision. One of these employees was the Claimant, Signal Maintainer Gale McVey.

According to Supervisor Zink, his audit of recent signal system tests performed by the Claimant resulted in several deficiencies. For instance, before a Signal Maintainer is permitted to perform tests on signal systems he is required to obtain a Form 704 from a Train Dispatcher in Jacksonville giving him permission to occupy the track. Supervisor Zink's audit revealed that in June 1997, the Claimant had purportedly performed signal system tests without obtaining a Form 704.

On August 22, 1997, the Claimant was notified to attend a Hearing to determine the facts and place responsibility, if any, in connection with FRA tests filed on his territory for the month of June 1997.

Facts presented at the October 7, 1997 Hearing reveal that on June 10, 11, 15, 18, 19 and 20, 1997, the Claimant had reported that he had performed FRA signal and/or switch tests. However, he did not obtain a Form 704 on any of these days. The Claimant contends that on June 10, 11, 19 and 20, 1997, he conducted the tests under another employee's work authority. He also claimed that on June 15 and 20, 1997, he had verbal authority from the Train Dispatcher to occupy the track. It is impermissible for Signal Maintainers to obtain verbal authority to occupy a track. Rather, a Form 704 must be obtained from a Train Dispatcher.

Supervisor's Zink's audit further revealed that the Claimant had not submitted his monthly switch tests for the month of July 1997. The FRA requires some switches to be tested every 30 days. The Carrier expects Signal Maintainers to file the results of these tests as soon as possible after they are completed, but in any event, no later than the last day of the month in which they are performed.

As of September 24, 1997, the Claimant had not tiled his monthly switch tests for July 1997 with District Supervisor Zink. Consequently, he was notified to attend a second Hearing to determine why he had not filed his monthly switch tests for the month

of July 1997. That Hearing was also held on October 7, 1997. At that Hearing, the Claimant said that he did not file his monthly switch tests for July 1997, because he had been out of service for medical reasons since August 7, 1997.

On October 20, 1997, the Carrier concluded that the charges against the Claimant were proven by the evidence adduced at the two Hearings held on October 7, 1997, and it terminated his employment as a result.

On November 6, 1997, the Claimant wrote to the Signal Department and accepted responsibility for the mistakes he made. He explained that he had recently entered the Carrier's Employee Assistance Program (EAP) for problems related to alcohol and was in the program when his Hearings were held. He said that his EAP counselor had released him to return to work and he wished to return.

On November 14, 1997, the Claimant resigned for reasons other than retirement.

Notwithstanding the Claimant's contention, the evidence presented at the two Hearings held on October 7, 1997, convinces the Board that he did not perform all of the FRA signal and switch tests that he claimed he conducted in June and July 1997.

In the Board's opinion, the Claimant falsified FRA reports when he attested that he had inspected switches and signal systems at several locations on his territory in June 1997. It appears that on at least June 15, 18 and 29, 1997, he did not inspect the switches that he claimed to have inspected. It is highly unlikely that a Train Dispatcher would have given him verbal authority to occupy the track.

The Board is also convinced that the Claimant in all likelihood did not perform any FRA mandated tests during the month of July 1997. As of October 7, 1997, he had still not filed the reports of his monthly switch tests although he insisted that he had performed the tests.

There is no question that the Claimant's misconduct was serious. He represented that he conducted switch and signal tests during June and July 1997, when, in fact, he did not perform many of these tests. In the light of the gravity of the Claimant's conduct the Carrier was justified in terminating his employment notwithstanding his 20 years of service and his unblemished disciplinary record. The claim must be denied as a result.

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.