

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36006
Docket No. SG-35841
01-3-99-3-845**

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
(Kansas City Southern Railroad

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

- (A) Claim on behalf of M. L. Loyd for payment of all time lost as a result of his deferred suspension from service for ten working days and for any reference to this matter to be removed from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, 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 June 18, 1998. Carrier File No. K0699-5224. General Chairman’s File No. BRS 9812847. BRS File Case No. 11072-KCS/MS.**
- (B) Claim on behalf of C. D. Francis for payment of all time lost as a result of his deferred suspension from service for three working days and for any reference to this matter to be removed from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, 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 June 18, 1998. Carrier File No. K0699-5223. General Chairman’s File No. BRS 9812747. BRS File Case No. 11072-KCS/MS.**
- (C) Claim on behalf of B. A. Powell for payment of all time lost as a result of his deferred suspension from service for three working days and for any reference to this matter to be removed from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 35, 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 June 18, 1998. Carrier File No. K0699-5222. General Chairman's File No. BRS 9812435. BRS File Case No. 11072-KCS/MS."

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.

This discipline case concerns three separate Claimants who were involved in the same incident. Claimant Loyd was working as an Acting Foreman and was assessed a ten day deferred suspension for his involvement in the incident that led to his personal injury. Claimants Francis and Powell were working as Signalmen under the direction of Acting Foreman Loyd at the time of the incident here involved and each Signalman was assessed a *three day deferred suspension for his involvement in the incident that occurred on May 27, 1998*. Each Claimant was properly notified to attend a formal Investigation relative to the incident. Each Claimant was properly represented by the Organization. Each Claimant indicated that he understood the purpose of the Investigation and that he was ready to proceed with the Investigation. Each Claimant testified on his own behalf and was permitted to cross-examine the witnesses who testified. In short, the Claimants were accorded all Agreement due process rights to which they were entitled. Following completion of the Investigation, each Claimant was properly notified of the discipline assessed for his involvement and responsibility in the incident. Appeals were made by the Organization on each Claimant's behalf and, failing to reach a satisfactory resolution of the dispute, the case has come to this Board for final adjudication.

From the Hearing record, it is apparent that each of the Claimants played an active, participative role in the circumstances which led to the personal injury that was sustained by Claimant Loyd. From the case record, the Board learned that Claimant Loyd has since resigned from the Carrier's service. Therefore, his position in this dispute is moot at best. The

Hearing record contains more than substantial evidence to support the conclusion that Claimants Francis and Powell were less than attentive to what they were doing when Claimant Francis cavalierly rolled a ten-foot section of pipe weighing approximately 100 pounds into a ditch in which Claimants Powell and Loyd were positioned. Such carelessness had the potential for severe injury and should not occur under any circumstances. Clearly the assessment of a three day deferred suspension was extremely lenient in view of the Claimants' acknowledgment that they had not pre-arranged the action.

The Organization's argument relative to an imprecise charge notice and other alleged procedural deficiencies in the Hearing record are not persuasive. The three Claimants' own testimony support the conclusions reached by the Carrier. The measure of "substantial evidence" necessary to support an assessment of discipline has been met by the Carrier. The claims as presented are denied.

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 April, 2002.