

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36065
Docket No. SG-36180
02-3-00-3-378**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway (former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co. (former Burlington Northern Railroad):

Claim on behalf of R. P. Brown, Sr. for reinstatement to service with compensation for all lost time and benefits and seniority unimpaired, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it dismissed the Claimant from service without meeting the burden of proving the charges against him, and without the benefit of a fair and impartial investigation, and issued harsh and excessive discipline against him in connection with an investigation held on March 23, 1998. Carrier’s File No. SIA 98-10-10AA. General Chairman’s File No. D-5-98(d). BRS File Case No. 11330-BN.”

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.

The Claimant was an assigned Signalman. On February 20, 1998, he and Assistant Signalman Kovar were dispatched to run wires at Intermediate 102.7. During the process one of the wires broke. The Claimant instructed Kovar to hold the wire, which was unlabeled. Kovar testified that he was told to continue to hold the wire while the Claimant obtained a meter, crimper and a bag of spades, returned and crimped the new spade onto the wire. Signalman Kovar attempted to plug it into the slot, but it would not connect. The Claimant thereafter inserted it into slot 34 of the contact. Testimony indicates that the Claimant was "confused" as to where the wire should be inserted and when asked if he contacted anyone for help, he replied that he didn't. The Claimant testified he checked his meter, felt the repair had been made and was picked up from the location.

On the following day, February 21, 1998, the Signal Control Center indicated the crossing gates were not properly operating. CTC Maintainer Rogers was called and after determining there were no problems with Main 2, he overheard a dispatcher conversation of a train on Main 1 indicating that the gates did not come down. A check established that there was a problem at Intermediate 102.7. A check of the electrical connections by Maintainer Rogers indicated that "... I believed a wire in 10, in the 1 West Track relay, 34, should be in 33." Maintainer Rogers made the change, activated and tested the equipment and confirmed that it was functioning correctly.

Signal Supervisor Zapp thereafter concluded that the Claimant and Assistant Signalman Kovar were the last employees working at Intermediate 102.7. By letter dated February 23, 1998, the Claimant was instructed to attend an Investigation surrounding the failure of the crossing signal. After postponements, an Investigation was held on March 23, 1998 concerning alleged violations of General Rule G16 of the Control System Instruction Manual and Operating Rule 1.1.1. The Carrier alleged that the Claimant failed to make proper repairs and failed to assure the correctness of his repairs by conducting operational tests. Following the Investigation the Claimant was notified by letter of April 17, 1998, that he was found guilty as charged and dismissed from the service of the Carrier.

The Organization takes exception to the fairness of the procedures. It seriously argues that the situation herein was such as to mitigate guilt. It maintains that the signal system the Claimant worked on had inaccurate prints of the system at that

location. It notes that the wire tags were not provided to indicate where the wire should be located. It further notes that the Claimant should have been under the direction of a Foreman, but was at a remote location without any supervision. The Organization argues disparate treatment, in that other employees were not similarly treated for the same actions. Given the Carrier's lack of proper direction, wire tags, and accurate prints, the incident is discriminatory, capricious and harsh.

The Carrier maintains that it acted appropriately. The Claimant violated General Rule G16 and Operating Rule 1.1.1. The Investigation and action was fair and there were no procedural violations. The burden of proof was met and the Claimant clearly did not make the proper repair or post repair operational test to assure his work was correct. It denies any excessive or discriminatory discipline based upon the Claimant's past record.

The record indicates that the Claimant is guilty as charged. The record demonstrates that the Claimant's actions constituted an improper repair in the connecting of the wire in slot 34. The argument that the wires should have been marked and the prints being inaccurate did not prevent CTC Maintainer Rodgers from determining the problem; that the wire in slot 34 should have been in slot 33. The testimony indicates that Maintainer Rodgers had never been to that location and had the same constraints as the Claimant. Yet, he was able to make the tests and assure that the work he performed was correct. The Rules in dispute state:

General Rule G16 of the Control System Instruction Manual

"When making a repair, adjustment, change or replacement, that may effect the operational system. Make immediate test to assure proper operation."

Rule 1.1.1 Maintaining a Safe Course

"In case of doubt or uncertainty take the safe course."

The record proves that the Claimant did not make the immediate test to assure proper operation and did not "take the safe course." The fact that there were bad prints, inaccurate prints and wires not properly tagged is not mitigating in these

circumstances. The Carrier has met its burden of proof that the Claimant violated the above Rules.

As for the discipline imposed by the Carrier, it is noted in the record on the property that the Claimant does not have a good record. Our review supports the Carrier's position that the discipline is "commensurate with the seriousness of his violation and his past personal record." The Board denies the claim at bar.

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 21st day of May, 2002.