

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36609
Docket No. SG-36323
03-3-00-3-562

The Third Division consisted of the regular members and in addition Referee Barbara Deinhardt when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**The Kansas City Southern Railway Company**)

STATEMENT OF CLAIM:

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

Claim on behalf of D. A. Luman, T. E. White IV, D. J. Riggs, and K. W. Pool for removal of reference to a 3 day deferred suspension from their personal records, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when it assessed discipline against the Claimants and imposed harsh and excessive discipline against them without meeting the burden of proving the charges against them in connection with an investigation held on June 10, 1999. Carrier’s File No. K0699-5320. General Chairman’s File No. 9902947. BRS File Case No. 11327-KCS.”

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.

Claimants, D. A. Luman, D. J. Riggs, T. E. White and K. W. Pool, were employed by the Carrier as a Signal Foreman, Signalman, and Assistant Signalmen, respectively. On May 26, 1999, they were assigned to replace bolts in a power switch. S. E. Jones was the Project Manager that day, but the work was under the direct supervision of Foreman Luman. To keep the switch point open while Pool was replacing the bolts, White and Riggs had pried the switch point open with a lining bar and then Riggs propped it up with a 2 x 10 board. Unfortunately, while Pool had his finger in the pinch point of the switch, the lining bar slipped and Pool broke his finger.

On June 2, the four Claimants were issued a Notice directing them to report for a formal Investigation to "ascertain the facts and determine [their] responsibility, if any, in connection with a personal injury that was sustained by Mr. Keith Pool at about 1000 hours, Wednesday, May 26, 1999, at or near the North Wye at Mile Post 558.2, resulting in lacerations and his left finger broken." The Notice informed the Organization that Manager of Detector Systems D. J. Wreyford would be present as a witness. Following an Investigation on June 10, at which Project Manager Jones was not called to testify, the Claimants were each issued a three day deferred suspension for violations of specified Safety and General Rules and Maintenance of Way and Signal Department Rules.

The Organization argues that the Notice of Investigation was defective because it did not set out the Rules the Claimants were being charged with violating. It also claims that that the Investigation was faulty in that Project Manger Jones was not called to testify about the events of the day. He was the one in charge and thus the one who should be held responsible if the work was not being performed safely, but there was no opportunity to question him about his conduct. Finally, the Organization argues that there is no evidence that the Claimants knowingly engaged in unsafe work practices. They had never worked on a switch that was suspended in the air as it was that day, they were not equipped with the type of pliers that the Carrier belatedly said should have been used to remove the bolts, and the work was rushed under the direction of Project Manager Jones.

The Carrier asserts that the Notice put the Claimants on clear notice about the nature of the Investigation and they were not surprised about the evidence they were called upon to dispute. Thus the Notice was sufficient. As to Project Manager Jones' responsibility, the Carrier points out that Signal Foreman Luman, not Jones,

was the employee in charge and was the one to decide how the work was to be done. There is no evidence that Jones even observed the work being done. The manner chosen by the Claimants to perform the work was inherently unsafe. The Claimants concede that there were safer ways of doing the work, such as putting a block of wood in the switch point. Where there is any doubt, safety should always come first.

We find that the Notice was sufficient to put the Claimants on notice of the nature of the charges and the evidence that would be presented at the Investigation. The Organization made no showing of any prejudice or surprise suffered by the Claimants because of the content of the Notice.

We also find that the evidence is persuasive that an unsafe act was committed. Particularly where the switch was suspended in the air and thus somewhat unstable, and the work therefore had to be done in a manner unfamiliar to the Claimants, greater care should have been taken to ensure the safety of those working on it. It is a basic rule not to put hands into a pinch point, as tracks may shift or other circumstances may cause the switch point to close.

The Claimants cannot shift responsibility for their unsafe act to Project Manager Jones. There is no evidence that Jones told them to perform the work in this way or saw them performing the work in this manner. To the contrary, it is clear from the record that it was Foreman Luman who made the decision. Yet the other Claimants cannot shift the responsibility to Luman either. In numerous cases before the Board, it has been held that each employee is responsible for his or her own actions and for performing work safely. The fact that others may also be at fault does not excuse the employee's own carelessness. See, e.g., Third Division Award 31729. Because Jones' conduct, including his proximity to the scene, is not relevant to the Claimants' culpability, and because the Carrier's decision was supported by the testimony of the Claimants themselves, it was not a violation of the Agreement for the Carrier not to have called Jones as a witness.

The most important rule on the railroad is Safety First. The Claimants should have known they were working unsafely. Discipline is therefore warranted.

AWARD

Claim denied.

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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 Divisio**

Dated at Chicago, Illinois, this 29th day of July 2003.