

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37302
Docket No. SG-37542
04-3-02-3-618

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of C. R. VanderJagt, for compensation for all lost time and benefits and to have all reference to this matter removed from his personal record in connection with a 30-day suspension from service, in connection with an investigation held on October 25, 2001, account Carrier violated the current Signalmen's Agreement, particularly Rule 701, when it suspended the Claimant without a fair and impartial investigation, and without meeting the burden of proving the charges against him. Carrier's File No. 15(01-0191). General Chairman's File No. 01-79-PM. BRS File Case No. 12185-C&O (PM).”

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 employed on October 7, 1991. On September 25, 2001, he was working his regular assignment as a Signal Maintainer at Grand Rapids, Michigan. His duties that day included resolving the Sunnyside Interlocking problem at the No. 7 crossover. In order to correct said signal problem, the Claimant disabled the highway safety gates at the Grandville and Century Avenue grade crossing. He disabled the traffic gates by applying jumper wires to perform the necessary maintenance and was required to document such disablement. He became distracted with the task of acquiring parts to repair the problem and forgot to follow through with the proper documentation and notification process. Once the repairs were completed, the Claimant authorized that the Train Dispatcher be notified that the tracks were restored to service at approximately 2:30 P.M. The Claimant additionally forgot to reactivate the crossing gates at Grandville and Century Avenue.

Shortly thereafter, a train crew reported a malfunction of the gates at Grandville and Century Avenue. The gates remained in the upright position as the train traversed the crossings. The Claimant's supervisors discovered that the Claimant had been negligent in the maintenance of the signal equipment.

By letter dated September 27, 2001, the Claimant was directed to attend an Investigation to be held on October 11, 2001 "to determine the facts and place responsibility in connection with the incident on Tuesday, September 25, 2001, at Sunnyside/Plaster Creek in Grand Rapids Terminal at approximately 3:15 PM (1515 Hrs) when the jumper cables which you installed to disable the active warning devices at Grandville and Century Avenue at grade road crossings were not removed prior to the release of the 704 track authority and the subsequent movement of trains. In conjunction with the aforementioned incident, you are charged with negligent maintenance of signal equipment as well as failure to ensure active warning devices are functioning as intended prior to the movement of trains or otherwise provide an alternate method of protection...."

The Hearing was held on October 25, 2001. In a letter dated November 14, 2001, the Carrier notified the Claimant that as a result of the Investigation, it was determined that he was guilty as charged and would be assessed a 30-day suspension. Because the time had already been served, the Claimant was restored to service upon conclusion of the Investigation.

By letter dated November 19, 2001, the Organization appealed the Carrier's decision to suspend the Claimant, contending that the Carrier failed to meet its burden of proof and that the discipline assessed was unwarranted and excessive.

The Organization contends that the discipline was unwarranted. It asserts that the burden of proof in a discipline matter such as this is on the Carrier and that burden of proof has not been met. It further contends that the Carrier imposed harsh and excessive discipline against the Claimant. According to the Organization, the Carrier's decision to discipline the Claimant constitutes an abuse of its discretion and it should now be required to compensate the Claimant for all lost time and benefits, with all reference to the discipline and Investigation to be removed from his personal record.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Investigation in accordance with the requirements of the Agreement. The Carrier considers the Claimant guilty as charged. According to the Carrier, the Claimant's own admissions during the Investigation demonstrate sufficient grounds to support his culpability. The Carrier contends that the discipline was appropriate based on the nature of the offense.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325, Third Division Award 16166.)

After a review of the record evidence, the Board finds that there was substantial evidence in the record to uphold the Carrier's position in whole. The Board notes that the Carrier proved the Claimant's negligence. His failure to remove the jumper wires was in clear violation of the Carrier's policy.

Based on the record, the Board concludes that the 30-day suspension is an appropriate penalty. The discipline assessed for the Claimant's error is commensurate with other similar CSXT cases involving protection for work authority on the right-of-way as referenced in Third Division Awards 35029, 32196, 29047 and 28634. Therefore, the claim is without merit. The Board shall not disturb the discipline imposed.

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 December 2004.