

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37331
Docket No. SG-37715
05-3-03-3-58

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 Baltimore and
(Ohio Railroad 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 M. L. Efaw, for all lost wages and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 50, 51 and 52, when it imposed the excessive discipline of a five-day suspension against the Claimant as a result of an investigation held on December 18, 2001, without meeting the burden of proving the charges. General Chairman’s File No. M L EFAW-INSV. BRS File Case No. 12412-B&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.

On Tuesday, November 13, 2001, the Claimant, who was assigned to the position of Lead Signalman, was responsible for returning CSXT Boom Truck No. 006228 to the staging facility located at Hagerstown, Maryland. While attempting to traverse a road crossing in the Hagerstown Yard, the boom truck stabilizers hit the crossing. The impact was sufficient enough to warrant the Claimant to visually inspect the truck for damage after he parked it some 25 feet from the crossing. The Claimant's inspection was performed in the dark without the aid of a flashlight.

The stabilizers were not used on the truck until the following Monday, November 19, 2001. The Claimant and Signalman Southwood were in the process of preparing to use the boom to unload a signal case, but before the lift was made, significant damage to the stabilizers was discovered. An inspection revealed twisted stabilizers, drag marks on the right side stabilizer and several broken and/or missing stabilizer bolts. The passenger's side stabilizer was pushed to the rear of the vehicle and driver's side stabilizer was moved towards the front of the vehicle. It was at this time that the Claimant admitted to Supervisor of Signal Construction J. W. Knerr that the stabilizers had struck the road crossing at Hagerstown Yard while he was driving the vehicle on Tuesday, November 13, 2001.

By letter dated December 5, the Carrier directed the Claimant to attend an Investigation to be held on December 12, 2001, ". . . to develop the facts and place responsibility, if any, for damage to CSX Boom Truck #006228, assigned to signal construction team 7X18, that was discovered on or about November 19, 2001 at Route 2 ... while unloading a signal case. You are charged with the failure to make a proper inspection of company vehicle, damage to company vehicle and late reporting of the vehicle incident to company vehicle #006228 on November 13, 2001."

The Investigation was ultimately held on December 18, 2001. In a letter dated January 15, 2002, the Carrier informed the Claimant that he was found guilty as charged and issued a five-day actual suspension.

By letter dated March 12, 2002, the Organization appealed the decision to suspend the Claimant, contending that the five-day suspension was not warranted based on the facts developed at the Investigation. It contended that the witness for the Carrier lacked knowledge of any relevant facts, and was therefore not credible.

It asserts that the burden of proof in a discipline matter such as this is on the Carrier and that burden has not been met. The Organization contends that the Carrier imposed harsh and excessive discipline upon the Claimant. According to the Organization, the Carrier's decision to discipline the Claimant constitutes an abuse of its discretion and the Carrier 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 Signalmen's Agreement. It considers the Claimant guilty as charged. According to the Carrier, the evidence adduced during the Investigation demonstrates sufficient grounds to support the Claimant's culpability and 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 its discretion. See Second Division Award 7325 and Third Division Award 16166.

After a review of the evidence, the Board concludes that the Carrier failed to adduce substantial evidence to prove that the Claimant failed to make a proper inspection of the company vehicle, caused damage to the vehicle, or failed to report a vehicle incident in a timely fashion. While circumstantial evidence can rise to the level of "substantial," the Board simply cannot find that the evidence presented in the instant case is sufficient. See Third Division Award 26435.

Accordingly, pursuant to Rule 52 – EXONERATION, the charge shall be stricken from his personal record and he shall be allowed payment for the assigned working hours actually lost, less any earnings in or out of service.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of January 2005.