

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37393
Docket No. SG-38128
05-3-04-3-23

The Third Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Canadian National/Illinois Central

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central:

Claim on behalf of S. H. Khan, for reversing the discipline assessed, exonerate the Claimant of all charges, and reimburse him at the foreman's rate of pay for the six work days he was suspended, plus meal allowances for each missed day, account Carrier violated the current Signalmen's Agreement, particularly Rule 35, when on January 15, 2003, it withheld the Claimant from service to ascertain the facts of an alleged false proceed prior to the investigation; Carrier also violated Rule 35 when it failed to provide a fair and impartial investigation evident when it issued discipline of a six (6) work day suspension against the Claimant without proving the charges in connection with an investigation held on January 20, 2003. Carrier also violated the time limits of Rule 35, when it failed to advise the Claimant in writing at least seventy-two (72) hours prior to the investigation of the exact charge or charges. Carrier also violated Rule 30 when it failed to train the Claimant on equipment for which he was held responsible. Carrier's File No. IC-135-103-00002. General Chairman's File No. IC-003-03. BRS File Case No. 12691-IC."

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 record indicates that during the week of December 9, 2002, Claimant Shafath H. Khan was working as Signal Foreman on Gang GH01 and was instructed to renew track wires on the east and west side of the grade crossing at Des Plaines Avenue in North Riverside, Illinois. On January 14, 2003, a train crew reported a false clear while leaving the yard. Facts developed at the formal Investigation held on January 20, 2003 revealed that the wires at Des Plaines Avenue were transposed. The Claimant failed to make the required tests although he was the Signal Foreman in charge. The record indicates that the Carrier had cause to suspend the Claimant for six days. See Second Division Award 6240 and Third Division Award 14601.

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 24th day of February 2005.