

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37428  
Docket No. SG-37841  
05-3-03-3-119**

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  
(Canadian National Railway (former Grand Trunk  
( Western Railroad, Inc.)

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (CN):**

**Claim on behalf of E. D. Miller and J. K. Ragland, for the removal of the discipline assessed and any mention of this matter in their personal records, account Carrier violated the current Signalmen’s Agreement, particularly Rule 42, when it acted in an arbitrary and capricious manner and imposed harsh and excessive discipline against the Claimants without meeting its burden of proof in connection with investigations held on March 28, 2002. Carrier’s File No. 8390-1-139. General Chairman’s File No. 02-39-GTW. BRS File Case No. 12566-GTW.”**

**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, February 26, 2002, Claimants E. D. Miller and J. K. Ragland were working on a signal upgrade project at Wellsboro, Indiana, located at Mile Post 71.1. The signal crew had authorized track protection from Mile Post 68 to 75. The Claimants were testing the signal equipment at approximately 1300 hours by dropping tracks to simulate train movement. In doing so, the Claimant placed a shunt on a track that caused a clear signal to suddenly drop to red in front of oncoming Train 275 at Stillwell, Indiana. Stillwell is located at Mile Post 80, outside of the Claimants' authorized protective track limits. The Claimants' actions caused the train crew to apply its emergency brakes. The train crew contacted the Train Dispatcher to inquire as to the reason for the activation of the stop signal. The Dispatcher advised them that the stop signal was most likely the result of the signal testing crew at Wellsboro.

By separate letters dated March 7, 2002, the Claimants were directed to attend separate Investigations to be held on March 15, 2002, "... to determine your alleged responsibility or negligence, if any, in relation to a violation of USOR Rule 1 of the Canadian National Illinois Central Operating Rules effective October 1st, 2000, which reads as follows: One, altering equipment without authority: Employees must not alter, nullify or change the design of or in any manner restrict or interfere with the normal function of any device or equipment on railroad property, except in the case of any emergency. Employees must report to the proper supervisor changes made in an emergency."

The Investigations were held on March 28, 2002. In separate letters dated April 9, 2002, the Carrier notified the Claimants that as a result of the Investigations, they were both found responsible for violating Rule 1 of the CN/IC Railroad Operating Rules when on Tuesday, February 26, 2002, a shunt was put on the track at Wellsboro, Indiana, causing a signal to drop in front of an oncoming train. The Carrier also notified the Claimants that they were each assessed a five-day record suspension and 15 demerits.

By letter dated April 16, 2002, the Organization appealed the discipline. The Organization claims 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 has not been met. The Organization contends that the Carrier imposed harsh and excessive discipline against the Claimants. According to the Organization, the Carrier's decision to discipline the Claimants specifically violated Rule 42 in that the Claimants were denied fair and impartial Investigations. Further, the Organization contends that the discipline constitutes an abuse of the Carrier's discretion and the Carrier should now be required to remove any mention of such discipline from their personal records.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimants were clearly afforded fair and impartial Investigations in accordance with the requirements of the Agreement. It considers the Claimants guilty as charged. According to the Carrier, the record in this matter provides substantial evidence to support the Claimants' culpability. The Carrier asserts that it met its burden of proof and that the level of discipline assessed 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 record evidence, the Board finds substantial evidence to uphold the Carrier's decision. The Carrier proved that the Claimants violated the relevant Rules when a shunt placed on the track at Wellsboro caused a signal to drop to red in front of an oncoming train. Further, the Board finds that the Claimants received fair and impartial Investigations. In addition, based on the record, the discipline imposed upon the Claimants is reasonable and we will not overturn it.

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**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 22nd day of March, 2005.**