

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
—THIRD DIVISION**

Award No. 37537
Docket No. SG-38065
05-3-03-3-509

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of R. V. Tucker, for reimbursement for any and all lost time and benefits and his record should be cleared of any and all reference to this matter, account Carrier violated the current Signalmen's Agreement, particularly Rule 68, when it failed to provide a fair and impartial investigation and issued discipline of Level 2, and required to attend 1 day of alternative assignment with pay to develop a Corrective Action Plan on the Claimant without proving the charges in connection with an investigation held on November 7, 2002. Carrier also violated the time limits when it failed to notify the Claimant of the specific charge or charges within the required time limits. Carrier's File No. 1349207. General Chairman's File No. UPGC-1147. BRS File Case No. 12766-UP.”

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 August 18, 2002, Claimant R. V. Tucker was a Signalman on Gang No. 6431 working out of Portland, Oregon. There were nine employees on Gang No. 6431, including Signalman T. Bustamante.

On or about August 20, 2002, an anonymous caller called the Carrier's Equal Employment Opportunity (EEO) hotline and reported that an employee(s) working in Portland, Oregon, was making hangman's nooses. On August 23, 2002, the EEO office in Omaha, Nebraska, notified R. Macquarrie, Director of Signal Construction at Portland, of the complaint.

On August 27, 2002, the Senior Special Agent at Portland interviewed several employees, including the Claimant. Signalman Tucker told the Senior Special Agent that on August 18, 2002, Signalman T. Bustamante came to him and asked him to help him make a hangman's noose. The Claimant said he was unable to make a hangman's noose because he only had a small piece of string, but he was able to show Bustamante how to make one.

A few minutes later, the Claimant observed P. Brown, Foreman of Gang No. 6431, make a hangman's noose out of rope. He said the noose was large enough to fit over a man's head. He heard Foreman Brown joking about putting the noose over the head of M. Scott, the Assistant Foreman of Gang No. 6431. There was friction in the gang between the Foreman and the Assistant Foreman.

On September 10, 2002, the Claimant was notified to attend an Investigation to develop the facts, and determine his responsibility, if any, for allegedly creating and/or displaying a hangman's noose(s) on August 18, 2002, while working at Portland, Oregon. The Hearing was held on November 7, 2002.

On December 3, 2002, the Claimant was assessed Level 2 discipline for his purported violation of Rule 1.6 and Rule 1.9 of the Union Pacific General Code of Operating Rules and the Carrier's EEO Policy.

On January 2, 2003, the Organization appealed the Claimant's discipline contending that the Carrier violated Schedule Rule 68 when it did not notify the Claimant of the charge(s) against him within 15 calendar days from the date it had knowledge of his alleged offense. The Organization further argued that the charge was not specific as required by Rule 68. It also asserted that the Claimant was not guilty of the charge because he did not create or display a hangman's noose, nor did he commit any act of hostility, misconduct or willful disregard or negligence affecting the interest of the Carrier or its employees.

The Carrier denied the appeal arguing that it notified the Claimant of the charge against him within 15 calendar days from August 27, 2002, the date on which it became aware of his involvement with making hangman's nooses. The Carrier also maintains there is no question the Claimant was involved in creating and displaying a hangman's noose on Company property. It contends that the Level 2 discipline assessed the Claimant for this misconduct was, if anything, lenient.

The Board agrees with the Carrier that the Notice of Investigation complied with Rule 68. On August 27, 2002, the Senior Special Agent at Portland, Oregon, interviewed the Claimant. He told the Special Agent that he showed Signalman Bustamante how to make a hangman's noose with string. This was the first knowledge the Carrier had of the Claimant's involvement with making hangman's nooses on Company property. The September 10, 2002, Notice of Investigation was served within 15 days as required by Rule 68.

Notwithstanding the Organization's objection, the charge against the Claimant was specific. He and his representative knew why the Hearing was being held. The Carrier was not obligated to identify the precise part of Rule 1.6 that was allegedly violated. Moreover, reference to the Carrier's System Special Instructions during the November 7, 2002, Hearing caused the Claimant no harm because he was exonerated of violating those instructions.

That the Claimant showed Signalman Bustamante how to make a hangman's noose while they were working on Signal Gang No. 6431 is undisputed. He said he was unaware that this violated the Carrier's EEO Policy. It appears that the Claimant did not intend this gesture to harass or harm any member of the gang. Nonetheless, his conduct was inappropriate because it could be perceived as a

racially hostile act inasmuch as hangman's nooses have long been viewed as symbols of oppression against African Americans. The Level 2 discipline assessed the Claimant for his misconduct was not excessive or unreasonable. Accordingly, the claim must be denied.

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 23rd day of June 2005.