

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38224
Docket No. SG-38593
07-3-04-3-598

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Railroad Signalmen**
(CSX Transportation, Inc

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Louisville & Nashville):

Claim on behalf of C. W. Blady, B. L. Garrett, J. A. Howard, K. G. Mattingly and R. D. Price, for removal of all discipline and all reference of this incident from each of the Claimants’ personal record; pay each Claimant a total of 163 hours at their respective rates, account Carrier violated the current Signalman’s Agreement, particularly Rule 55, when it failed to provide a fair and impartial investigation and then assessed excessive discipline against the Claimants in connection with an investigation held on October 31, 2003. Carrier compounded its violation when it violated the time limits for holding the investigation. Carrier’s File No. 15(03-0141). General Chairman’s File No. 03-INV-11. BRS File Case No. 12975-L&N.”

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.

At the time of their discipline, the Claimants were assigned to System Signal Construction Gang 7V25, with headquarters in Motels Line of Road. On or about October 21, 2003, the Claimants were working on the Main Line Subdivision at milepost 170.7 between Peytonia and Montfort Stations near the Carrier's Nashville, Tennessee, Terminal. Claimant Price was the Lead Signalman. On the date in question, he held a 704 authority for the gang to occupy mainline track in order to dig in new track wires. At approximately 11:40 A.M. Claimant Price was operating a backhoe that inadvertently snagged cable from the circuit controller. Two cable wires were broken and two pulled loose from their terminals. The gang spliced the broken wires and reconnected the wires that had pulled loose from their terminals. Claimant Price then released his 704 track authority to the Train Dispatcher.

Shortly after the repair was made and the track authority released, northbound train Q 526-21 passed, received and reported a false proceed signal that erroneously indicated the next two blocks were clear, when in fact they were not. In fact, another train occupied the second block ahead. Upon inspecting the location of the gang's repairs, the General Supervisor found that the track polarity in the wires had been swapped. He and Lead Signalman Price corrected the problem, and the signal checked out properly to be returned to service.

By letter of October 25, 2003 all five members of Signal Force 7V25 were notified to appear for an Investigation regarding their

“... responsibility, if any, in connection with [their] failure to make the proper operational checks after splicing and re-connecting a cable to a derail circuit controller improperly at or near M.P. 170.8 on the Mainline Subdivision. These improper connections resulted in a Critical Rule violation which allowed train Q526-21 to receive a false proceed aspect on the 1722 Northbound Intermediate Signal on October 21, 2003 on or about 1225 hours. . . .

You are charged with the violation of FRA Regulations (49 CFR 236.4) and CSXT Train Control System Reference manual SRI rules 1.305, 1.201 and 2.827, which states: ‘When work is being done on polarized circuits, only one wire must be off the binding posts at a time, or wires and posts must be clearly marked to avoid any possibility of reversing the polarity of the circuit. After wires are restored, necessary checks must be made immediately to determine that all affected facilities are working properly.’”

Following the Investigation which was held on October 31, 2003, all five Claimants were found guilty of the charges. They were each assessed a 30-day calendar suspension. The discipline was appealed and progressed according to the provisions of the Parties’ Agreement, after which it remained in dispute.

A careful review of the record indicates that the Claimants received a fair Hearing and convinces the Board that with respect to the discipline assessed Garret, Howard and Price – the Lead Signaller and the two employees working directly with him on the derail circuit controller – was reasonable in the circumstances, particularly considering the potential for damage to Carrier property and personal injury. However, we note that Claimants Blady and Mattingly were not involved in the failure of the circuit controller during the time in question. Claimant Blady was working away from the location of the circuit controller, and Signal Foreman Mattingly, who was otherwise engaged, testified that he asked the remaining three Claimants if the circuit had been properly checked out and was told that it had been. Accordingly, Blady was not in a position to observe whether it was working properly or assure that it was properly checked to ascertain that fact, and Mattingly reasonably relied on the word of his Lead Signaller that everything was in working order.

Under those circumstances and in light of the findings of Third Division Awards 23855 (Referee Scheinman) and 21240 (Referee Eischen) the Board finds that the Claimants were not disciplined in an equitable manner. Such a “broad brush” approach, when two members of the gang are clearly without guilt, cannot be sanctioned. Accordingly we find that Claimants Blady and Mattingly shall have their discipline removed, shall be made whole for time lost, and shall have their records cleared of the charges.

AWARD

Claim sustained in accordance with the Findings.

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 25th day of June 2007.