

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39148
Docket No. SG-38594
08-3-NRAB-00003-040599
(04-3-599)

The Third Division consisted of the regular members and in addition Referee Sinclair Kossoff 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 Baltimore & Ohio):

Claim on behalf of M. R. Chamberlin, M. D. Olejarz and R. P. Southwood, for all lost wages, this matter be removed from their personal records; and that each Claimant be paid additionally several days wages for the days missed because Carrier did not return them to work at the end of their suspension. Account Carrier violated the current Signalman’s Agreement, particularly, Rule 50, when it failed to provide a fair and impartial investigation evident when it issued harsh and excessive discipline against the Claimants as a result of an investigation held on October 16, 2003. Carrier also violated the Agreement when it failed to return the Claimants to service at the end of their suspension. Carrier’s File No. 15(03-0152-153-154. General Chairman’s File No. Insv-RPS-MRC-MDO. BRS File Case No. 12987-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.

Claimant R. P. Southwood was found guilty of failing to comply with CSXT Operating Rule 704 when on-track equipment working under his responsibility and Rule 704 authority on Tuesday, September 30, 2003, at Glenwood Jct. for signal construction work in the Glenn block entered and was present on the main track in the Laugh block without proper or additional authority at approximately 4:00 P.M. on the P&W Subdivision. The decision letter dated November 4, 2003, notified Southwood:

“The facts revealed at the investigation conducted on October 16, 2003 proved your guilt as referenced in the charge letter. The results of this investigation showed that you indeed failed to comply with CSXT operating Rule 704, failed to work in accordance with the On-Track worker responsibilities and failed to ensure employees Chambers and Olejarz had a clear understanding of your prescribed work limits on Tuesday, September 30, 2003.”

Claimants Chambers and Olejarz were also found guilty of failing to comply with CSXT Operating Rule 704 and failing to work in accordance with the on-track worker responsibilities. They were further found to have failed to work with the proper on-track safety protection in place when working outside the protected working limits on that date.

The evidence establishes, and Claimants Chambers and Olejarz admitted, that at approximately 4:00 P.M. they set on-track equipment at Tecumseh Street. Tecumseh Street is at BF milepost 323.90. Normally the Glenn block extends from BF milepost 319.0 to BF milepost 323.0, and the Laugh block, from 323.0 to 326.3. However, General Bulletin No. 107 dated September 26, 2003, on the subject TIMETABLE AND SIGNAL CHANGES BETWEEN SINNS AND JL TUNNEL

ON THE PITTSBURGH SUBDIVISION AND BETWEEN BRADDOCK AND FIELD ON THE P&W SUBDIVISION, changed the limits effective September 29, 2003. Glenn block was made to extend from BF milepost 319.0 to BF milepost 322.7, and Laugh block from BF milepost 322.7 to BF milepost 326.3. Thus both before and after the change, Tecumseh Street was within the Laugh block.

Section 4 of Rule 704 states in pertinent part, “. . . the employee-in-charge will be responsible for establishing on-track safety for others working within his limits. . . .” Claimant Southwood violated that provision when Claimants Olejarz and Chambers, whom he was protecting and responsible for, occupied track outside the protected working limits. Claimant Southwood had authority for signal construction work to be performed in the Glenn block, but Claimants Olejarz and Chambers entered and set on-track equipment in the adjacent Laugh block without any authority.

By setting on-track equipment outside the requested limits for which Rule 704 authority had been granted, Claimants Olejarz and Chambers violated the following portion of Rule 704:

“4. 704 Authority Within The Requested Limits

If there is a 704 authority within the requested limits, the track will not be occupied until the employee-in-charge gives his permission to occupy the track within his authority. . . .”

Claimant Southwood could not, and did not, give Claimants Chambers and Olejarz permission to occupy track in the Laugh block. By setting on-track equipment within the Laugh block Claimants Chambers and Olejarz clearly violated Rule 704 because 1) they went outside the requested limits and 2) they did not have permission to occupy track in the Laugh block.

The Organization contends that the 30-day suspension imposed on each of the Claimants was arbitrary, capricious, excessive, and disparate discipline because of mitigating circumstances surrounding the case. The mitigating circumstances, according to the Organization, consisted of the Claimants’ unfamiliarity with the territory and an improper and incomplete job briefing on Monday, September 29, 2003, one day before the incident.

The Board finds that the circumstances of the case do not justify a reduction of the discipline given. Credible evidence establishes that the block limits pertaining to the signal construction work in Glenn block were stated in the job briefing. In addition, the limits of Glenn block were plainly set forth in General Bulletins 107 and 108, which were made available to all Claimants. The Claimants did not have to be familiar with the territory in order to check the milepost numbers where they were working to see if they were in the authorized block.

The evidence shows that the Carrier has five Life-Critical Rules for which the penalty for a first offense is a 30-day suspension. One of these violations is "Occupying track without authority." The Claimants were informed of these five Rules prior to the incident here involved. In addition, each of the Claimants attended a course in track worker safety in January 2003. No evidence was presented that anyone that the Carrier was aware of who was guilty of occupying track without authority since the promulgation of the Life-Critical Rules had received lesser discipline than the Claimants.

The single example relied on by the Organization as an exception involved an employee who, according to the Carrier, was not known by it to have taken part with the Claimants in the occupation of track without proper authority. The Carrier asserts that it learned of the fourth individual's participation together with the Claimants when it was too late to charge that individual in accordance with the requirements of the Agreement. The Board has no substantial basis for doubting the Carrier's explanation, and no evidence was presented that would support a finding that the Carrier intentionally favored the fourth individual by giving him a pass when the others were charged. The Board concludes that there is no evidence of disparate treatment in this case.

The Carrier, however, has not denied that the Claimants were not returned to work promptly upon the completion of their 30-day suspensions. We shall order that each of the Claimants be reimbursed for any time lost over and above the 30-day suspension.

AWARD

Claim sustained in accordance with the Findings.

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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 7th day of July 2008.