

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40302
Docket No. SG-40670
10-3-NRAB-00003-080545**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Alton & Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Alton and Southern:

Claim on behalf of R. D. Kilman, Jr., for payment for all time lost with any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 48, when it issued the excessive discipline of a five-day actual suspension and a ten-day deferred suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on July 18, 2007. Carrier’s File No. 1477022. General Chairman’s File No. S-Investigation-879. BRS File Case No. 14059-A&S.”

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.

According to the record of formal Investigation conducted on July 18, 2007, the Claimant had been employed in the Signal Department at East St. Louis, Illinois, for approximately eight years and as a Signal Maintainer for approximately two and one-half years when this dispute arose over the Carrier's imposition of a five-day actual suspension and a ten-day deferred suspension for violation of Rules 1.1, 1.1.1, 1.1.2, 1.6 and 1.24 of the General Code of Operating Rules and Safety Rules 70.1, 70.11, 80.1, and 80.2 when the Claimant, while working on Gang 9536 as a Signal Maintainer, stepped backwards onto an old piece of railroad tie while spraying weed killer, losing his balance, falling and twisting his left knee.¹

¹ The Rules at issue provide, in relevant part, as follows:

- 1.1 "Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment."**
- 1.1.1 "In case of doubt or uncertainty, take the safe course."**
- 1.1.2 "Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury."**
- 1.6 "Employees must not be: 1. careless of safety of themselves or others. 2. Negligent . . ."**
- 1.24 "Railroad property must be kept in a clean, orderly, and safe condition. Railroad buildings, facilities, or equipment must not be damaged or defaced. Only information authorized by the proper manager or required by law may be posted on railroad property."**
- 70.1 "Employees must:**
- Be responsible for their personal safety and accountable for their behavior as a condition of employment,**
 - Take every precaution to prevent injury to themselves, other employees, and the public,**
 - Comply with all rules, policies, and outstanding instructions,**
 - Report, correct, or protect any unsafe condition or practice, . . .**
 - Use good judgment in fulfilling job responsibilities safely."**

The facts surrounding the above incident are relatively straightforward. On May 18, 2007, after being assigned to cut and spray weeds around the Carrier's signal equipment, the Claimant took a weed trimmer and cut the weeds around a propane tank used to supply gas to the No. 3 switch. He then proceeded to the outer edge of the mown section and began walking backwards towards the tank to spray the weeds. At some point he stepped backwards onto either an old railroad tie or piece of utility pole. The wood was rotten and gave way under the Claimant causing him to slip off of it, jam his foot into the ground and twist his knee.

Russell Pratt, Manager of Signal Maintenance, testified that as part of the Claimant's duties, he was responsible for ensuring that the work site and the area that he was working in were clean and free. In short, it would be customary for the Claimant to clean up his particular work area including any railroad ties and other debris that were lying around the grounds. When Pratt arrived at the scene after the injury occurred, he noticed that next to the propane tank there were some pieces of an old tie and part of an old pole lying on the ground next to the tank. Pratt testified that by choosing to walk backward while spraying, the Claimant did not have his eyes on the path – i.e., he was basically walking blind with no protection. Pratt noted that had the Claimant sprayed and walked forward he would have seen the debris in his path and taken a safe course around it; thus, in his view, the injury was preventable. Pratt noted that after the weed cutting, the ties and poles were completely visible. Pratt also testified that it was common practice for an individual

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- 70.11 “Good housekeeping must be maintained at all times. Dispose of garbage, water bottles, used batteries, or other refuse material . . . in a proper manner and in appropriate disposal receptacles. Do not discard aerosol cans in containers that may be incinerated. Company refuse facilities are not to be used for personal use. Do not place or allow tools, equipment or other materials to remain on floors, stairways, or walkways where they could cause a slip, trip, or fall.”
- 80.1 “Observe safety practices that eliminate slips, trips and falls. . . . Avoid objects, obstructions, holes, and openings and be alert to underfoot conditions. . . .”
- 80.2 “When walking, keep your eyes on the pathway and if hazardous under conditions exist:
- Keep your hands out of pockets for balance.
 - Take short, deliberate steps with toes pointed outward.
 - When stepping over objects, such as rails, be sure your front foot is flat before moving your rear foot.”

working alone to request assistance from maintenance to help clear up debris in the work area.

In his defense, the Claimant testified that he was not “willy nilly” stumbling around backwards. Rather, he had opted to walk backwards, stop, and spray in order to avoid walking into the weed killer. Pratt, however, testified that although the Claimant had been issued a pair of rubber boots to protect his feet as he walked forward spraying the weeds, on the day in question, the Claimant was not using the boots. He further stated, without challenge, that the Claimant had taken a Rules examination in 2007, and the Claimant conceded that he was acquainted with the Safety and housekeeping Rules at issue. The Claimant also testified that although he had requested clean-up assistance in other areas and he was aware of all of the debris in the area, which had been there a while, he had taken no steps to arrange for clean up at this location.

Charles Alexander, Assistant Superintendent of A & S Railway, also investigated the incident. When he got to the site, he observed that there was a lot of debris in the area including pieces of utility poles and concrete, an old tire and junk in the walkway.² In his view, no housekeeping had been done in this area and the Claimant violated all of the Rules with which he was charged by not taking the safe course and not being careful to prevent an injury in choosing to walk backward while performing his duties. As Alexander noted,

“If he’d been walking forward, complying with the rules and keeping his eyes on the walkway [the accident likely would not have occurred.] He’s the one that weed-eated the areas and exposed all the debris that was in the area and he didn’t trip over it when he was weed-eating.”

Alexander further stated that it was the Claimant’s sole responsibility for cleaning the area in question because he was the Signal Maintainer for that area.

² In contrast to Pratt, Alexander testified that he did not observe any ties; rather there were a number of pieces of old utility poles. Alexander testified that the charge letter states that the Claimant tripped over a tie because the accident report reflected the Claimant’s contention that he tripped over a tie. Resolution of whether the Claimant tripped over a tie or a utility pole, however, is not relevant to determining whether the Claimant violated the Rules in question.

The Organization asserts that no Rule prohibits an employee from stepping backwards if necessary. Additionally, it argues that the Carrier knew that these conditions existed prior to the incident, yet took no action to remedy the problem.

Those arguments are misplaced. The Carrier's well-established Safety Rules emphasize personal responsibility for one's safety while on the job. With reference to housekeeping responsibilities they are crystal clear. While walking backwards is not in and of itself a safety hazard, in the context of this case walking backwards in a field known to be strewn with debris constitutes negligent behavior. In addition, whether other employees should have taken action in the past to clean the area is irrelevant. The Claimant was the sole Signal Maintainer assigned to the area at issue on the day in question and under the Rules he was obligated to either request assistance to clean the area or exercise greater care to avoid contact with debris. Under the circumstances presented, the Board concludes that the discipline imposed was for good cause.

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 1st day of March 2010.