

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40303
Docket No. SG-40671
10-3-NRAB-00003-080559**

The Third Division consisted of the regular members and in addition Referee James E. Conway 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 S. C. Anderson, for all time lost, including overtime, and any reference to this matter removed from his personal record, account the Carrier violated the current Signalmen’s Agreement, particularly Rule 68, when it issued the harsh and excessive discipline of a 30-day Level 4 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 3, 2007. Carrier compounded this violation by failing to comply with the time limit provisions of Rule 68. Carrier’s File No. 1477023. General Chairman’s File No. S-Investigation-880. BRS File Case No. 14060-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 July 3, 2007, the Carrier conducted an Investigation at its Davidson Yard in Fort Worth, Texas, into charges lodged against Claimant S. C. Anderson¹ for allegedly performing work in a manner that caused improper proceed signal indications, activation failures of crossing warning systems, or defeated signal locking circuits in possible violation of GCOR Rule 56.1.3 (Compromising Signal System Safety).² On July 23, 2007, the Carrier notified the Claimant that he was found in violation of the Rules with which he was charged and was being assessed a Level 4 discipline of a 30-day suspension. Following denial in case handling on the property, the case was advanced to the Board for final resolution.

Evidence adduced at the Claimant's Hearing indicates that on June 7, 2007, a train crew informed Glen Marshall, Manager of Signal Maintenance, that the signal at the east end of Dome, Texas, which had a two position head, was reporting a red over green signal when it should have been red over lunar. Upon inquiry a Signal Maintainer informed Marshall that the lens in question was, in fact, green rather than lunar as the train crew reported. Marshall instructed the Signal Maintainer to remove the incorrect lens and place it in a case until he could get there so that the train crews would not continue to receive false signals. After arriving on the scene, Marshall asked the Signal Maintainer to put the lens that he had removed back into position so that Marshall could personally test it. This test demonstrated that the lens was green. The improper lens was then replaced with the correct lunar lens.

¹ At the time of the alleged misconduct, Anderson was the Signal Foreman of Gang No. 2676 which included J. T. MacLeod, D. V. Rogers, S. K. Kaiser, K. H. McKinley, J. W. Hayes, and B. W. Goodrum. Each was charged with misconduct and testified during the July 3 Hearing.

² Rule 56.1.3 (Compromising Signal System Safety) provides that: "Signal employees must not perform work that:

- Causes improper proceed signal indications;
- Causes activation failures of crossing warning systems; or
- Defeats signal locking circuits.

Marshall testified that Gang No. 2676 was responsible for the signal in question as well as several other locations where they were performing the same type of work. In checking those locations, he discovered the same incorrect red/green configuration at the west end of Dome. Marshall documented through photographs the incorrect configuration with the green lenses and then the proper configuration with the lunar lenses at both sites. Marshall determined that the remainder of the sidings had been done properly.

The Claimant and five of the six members of Gang No. 2676 testified that the signal at Milepost 477.3 was changed on May 19, 2007.³ All six witnesses also testified that they had not personally changed the lens or performed the required tests. Each testified that he had no recollection of how the signal was tested or if the signal was viewed from the front. In short, no one accepted responsibility for the work done that day or had any knowledge of how or even whether the lens was tested. Marshall testified that in the absence of proper reports filed by the Claimant, he had no evidence to show that the proper testing was done on May 19.

The Claimant conceded that it is standard procedure to run required tests whenever a signal head is changed. Typically that would include testing the wires leading to the signal head to make sure that they are tagged properly. The signal would then be lit, usually with the door open, while someone observed whether it was functioning. Standard procedure is to observe the signal from the back, although new signals are sometimes observed from the front.

The Claimant also testified that he did not know why a green lens was in the lunar lens position. He noted that they typically work only with the yellow and lunar lenses and sometimes prepare the heads with the lunar lens already installed before going to the job site and sometimes they change them at the job site. He testified that, as far as he knew, they had no green lenses on their trucks. However, he admitted that the crew had removed some heads with green lenses and left four of them at Big Springs. After learning of the problem with the lenses, he went back to check and three of the heads with the green lenses were missing.

³ Kaiser testified that he was on vacation on the day that the signal was changed and had no knowledge of the incident.

It is the Carrier's position that because the Claimant's crew was the last to service the signal, the Claimant bears the burden of responsibility for the improper lens being in the signal.

That position is hardly unreasonable. With the Claimant and his crew all admitting that they had serviced the signal, but none admitting personal responsibility for either replacing the lens or testing it, the Carrier is forced to the only plausible explanation for the failures. The Claimant's crew changed the lens, but failed to perform the required tests.

As an affirmative defense, the Organization asserts that the Claimant could not be held accountable for the problem because anyone could have fiddled with the signal during the 20 days that elapsed between the day the signal was serviced and the improper configuration was first observed by the train crew. Intervening causes suggested by the Organization ranged from an attempted terrorist attack, to vandalism, to a disgruntled employee, to someone purchasing the lenses and proper keys to open the locked signals from E-Bay. Such theories, however, enjoy no evidentiary support. Their likelihood is further diminished by Marshall's testimony that no other signals were incorrect or tampered with, indicating that the signals at Dome were solely singled out for such mischief. As Marshall noted,

"[I]t's in a very inaccessible location to the average person. You'd have to high rail into it, or walk in through a farmer's field and it makes it an unlikely place for somebody to want to cause a situation like this because it's just hard to do . . . [it's] almost impossible to get to, unless you just know its there and know how to get there, and know what to do."

The Organization's further argument that someone altered the lenses after May 19 is equally unlikely. Marshall explained that the signal would only be lit in that aspect for certain situations so that during the time period at issue, only 20 trains might have seen it. Marshall stated that, "I believe it's a bad situation and it probably wasn't tested properly. But I don't think it was questionable that crews would miss it." The Board agrees. That only one train crew reported a problem does not detract from the evidence that the Claimant and his crew were the last to service the signal.

The Board finds that the Carrier satisfied its burden of proving by substantial evidence the performance failures at issue.⁴ Failure to ensure that signals are properly working endangers both train crews and the general public. Given the seriousness of the lapses here, the Board concludes that the discipline imposed was warranted.

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.

⁴ The Board carefully considered the Organization's procedural arguments regarding timeliness and lack of Agreement due process and has rejected such arguments as unpersuasive. Timely mailing of the receipt satisfied the Carrier's obligation to notify the Claimant of the charge within the 15-day period. See Public Law Board No. 6459, Award 19 ("The Rule does not make the Carrier an insurer of receipt of the notice nor can it be read to mean that the decision is not, 'rendered' until it is received.") In addition, failure to call the Charging Officer did not result in a denial of due process.