

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40424
Docket No. SG-40665
10-3-NRAB-00003-080505**

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 D. Tomko, for the discipline assessed expunged and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 68, when it issued the excessive Level 2 discipline against the Claimant without providing a fair and impartial investigation and without meeting its burden of proof in connection with an investigation held on June 13, 2007. Carrier’s File No. 1474905. General Chairman’s File No. UPGCW-68-1459. BRS File Case No. 13991-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.

The Claimant is a 23-year employee who was assigned to a Signal Maintainer position on Gang 7688 at the time this dispute arose. By letter dated May 30, the Carrier charged that on May 22, 2007, the Claimant had compromised signal system safety when he failed to comply with standard safety instructions from the Carrier. As a result of an Investigation held on June 13, 2007, the Claimant was assessed Level 2 discipline (one day of alternative assignment with pay to develop a corrective action plan).

The Hearing examined the Carrier's charge that the Claimant failed to comply with instructions in the Carrier's Signal Test and Standards instruction booklet and, as a result, compromised signal safety. The safety breach was discovered during an inspection of switches when the Signal Manager and a Federal Railroad Administration (FRA) inspector visited the site. Upon examination, the pair discovered that the switch at West Estrella had a bent point detector rod, defective detector bushings, and defective shims on the latch out device. The Claimant was the employee responsible for maintaining the integrity of the switch at West Estrella. The Carrier stresses that switch defects can result in serious consequences and that if the Claimant had performed his maintenance duties in accordance with established instructions and guidelines, there would have been no switch failure or an FRA violation at that location.

In the alternative, the Carrier argues that the claim should be dismissed because the Organization failed in its initial claim to identify any specific Rule allegedly violated by the Carrier's action. According to the Carrier, the claim cannot be altered to include such information at the time of filing the case with the Board because appellate Boards are limited to reviewing matters that have been argued on the property.

The Organization takes exception to the discipline on grounds that the Claimant did not receive verbal instructions from his Manager. The Carrier, however, points out that its Signal Test and Standards booklet is an instruction promulgated by it to set forth detailed instructions concerning proper procedures for testing and maintaining switches in order to ensure safe functioning. Specifically, the instruction book provides that Maintainers should ensure that "shaft, cams and bushings do not have excessive wear and are properly lubricated."

The Carrier cites Rule 1.13, which provides:

“Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.”

Substantial evidence establishes that the Claimant violated the Rules cited in the letter of charges. Based on the record as a whole, the Board finds that the Carrier (1) developed safety instructions (2) delivered these instructions to the Claimant (3) “the instructions apply to the duties [of the Claimant]” and (4) he did not follow them. Indeed, the Organization admits in its Submission that the “Claimant recognized the wear on the bushings, but since it passed the test, figured he could replace the bushings at a later time.”

The Claimant was accorded all Agreement due process rights, with no procedural errors identified by the Organization. In light of these conclusions, the Board need not examine the Carrier’s alternative argument that the claim should be dismissed because the Organization failed initially to name a Rule as allegedly being violated.

The discipline assessed was issued in accordance with the Carrier’s discipline policy, and is not harsh, arbitrary or capricious for such misconduct.

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 14th day of May 2010.