

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40535
Docket No. SG-40462
10-3-NRAB-00003-080267

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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. D. Silva, for compensation for all time and benefits lost, including overtime, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 68, when it issued the harsh and excessive discipline of a Level 4, 30-day suspension, without providing the Claimant with a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on February 6, 2007. Carrier’s File No. 1466572. General Chairman’s File No. UPGCW-68-1421. BRS File Case No. 13893-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 instant case is a companion to Third Division Award 40534. Supervisor MacQuarrie testified at the Investigation of February 6, 2007, that the Claimant, Signal Foreman S. D. Silva, failed to properly perform his job. The testimony was part of a Hearing to determine responsibility, if any, for an allegation sent to the Claimant on January 24, 2007. The notice, alleging a possible failure stated the following conditions:

“While employed as Signal Foreman, on Gang #7740, at Sloan, Nevada, near Milepost 315, at approximately 1300 hours, on January 12, 2007, you allegedly failed to observe equipment clearance and allowed the boom on your truck to be raised and come in contact with a 3800 high voltage line jeopardizing the lives of yourself and fellow employees.”

The Claimant was alleged to have possibly violated Rule 78.7 (Booms Near Power Lines) which states:

“Do not operate booms over power lines at any time. Do not operate them under power lines unless proper clearance is maintained.

If proper clearance cannot be maintained, shut off the power and ground power lines before performing work.”

Supervisor MacQuarrie requested statements from the crew. He testified that Randle wrote that he had put the boom into the power lines. He testified that the Claimant with accompanying diagram indicated the same. MacQuarrie further testified that two people were required to operate the boom safely - the boom operator (S. E. Randle) and the Claimant, who would direct the boom. Hoagland, the Claimant's direct Supervisor, supported that testimony stating that the Claimant's responsibility was as a ground man to “watch everything that's going

around the boom, making sure everything is happening the way they want it to happen. . . .”

While the Organization argues that the Carrier failed to prove the charges and engaged in a procedurally flawed Investigation, the Board does not agree. The Claimant never denied his role or responsibility in the boom hitting the power line. In fact, the Claimant testified that during his job briefing he assigned Randle to handle the boom and took the position of ground man. The Claimant further admitted, “I wasn’t watching him . . .” when Randle hit the power line. This is an admission of guilt and proves the charges.

The Board finds no error in the procedural issues raised by the Organization. We find nothing in this instance wrong with MacQuarrie having a conversation with Strickland, who assisted with the proceedings. It occurred during a break, no one was sequestered, and there is no proof of a conversation related to testimony. Further, the Board studied all of the issues related to training and finds they are neither proven, nor mitigate against the Carrier’s findings of fault. This case involves a very dangerous safety issue. Employees could have been killed by moving the boom into a high voltage power line. The Board does not conclude from a full study that a lack of training or qualification had anything to do with the event. The Board concludes that guilt was proven and Level 4 discipline (30-day suspension) cannot be considered unwarranted by these facts. The claim is denied.

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 15th day of June 2010.