

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40568
Docket No. SG-40063
10-3-NRAB-00003-070308
(07-3-308)

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter
(Railroad Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp. (Metra):

Claim on behalf of S. Singleton, for any reference to this matter removed from his personal record and to otherwise be made whole, as required by Rule 54 - Exoneration, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it imposed a three-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 June 2, 2006. Carrier's File No. 11-7-567. General Chairman's File No. 12 D 06 SINGLETON. BRS File Case No. 13864-NIRC.”

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 April 26, 2006, the Carrier directed the Claimant to report for a formal Investigation on May 3, which was postponed and subsequently held on June 2, 2006, concerning the following charge:

“ . . . to develop the facts, determine the cause and assess responsibility, if any, in connection with your allegedly ending your tour of duty on April 25, 2006 at 2:00 a.m. without notifying the signal supervisor of an unusual condition, involving red signals at MP 13.9 and MP 15.1. In connection therewith you are charged with alleged violation of the following rules: Safety Rule No. 1.1.3”

The subject Rule in dispute is Metra Safety Rule 1.1.3 which states the following:

“Report by the first means of communication any accidents; personal injuries; defects in tracks, bridges, or signals; or any unusual condition that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the incident.”

On June 12, 2006, the Claimant was notified that he had been found guilty as charged and the Carrier imposed a three work days deferred suspension.

It is the position of the Organization that the transcript demonstrated that the Claimant contacted his immediate Supervisor, M. Tempinski, regarding signal problems at MP 13.9 and MP 15.1 on the evening in question at 8:07 P.M. which was not refuted. It argued the call was made by the Claimant requesting guidance on making repairs to the signals that were malfunctioning after he had performed tests and checked the pole line. It further argued that the record demonstrates that not only did he call his Supervisor, he called numerous Signal Maintainers including Signal Maintainer Allen, who works the day shift, to explain the problem that he was having. Additionally, it pointed out that the Claimant called the Dispatcher at the end of his shift and explained to him that the signals had not been repaired. Lastly, it argued that

even though he experienced problems with the Carrier's phone system, he made approximately 15 calls that day on his personal phone to correct the signals. It concluded by stating that the Claimant did not act like he did not care that the signal was not repaired, nor did he fail to notify the Carrier that the signal was still malfunctioning, and because of that it seeks to have the discipline set aside and the claim sustained as presented.

It is the Carrier's position that the evidence indicates that the Claimant ended his tour of duty at 2:00 A.M. on April 25 without notifying Signal Supervisor Tempinski of an unusual condition involving red signals at the aforementioned locations on his territory. According to the Carrier, the Claimant was required to report the red signals to his Supervisor and he acknowledged that none of the individuals he called had authority over Supervisor Tempinski, and if other signal employees had to come out, Tempinski would call them out. It further argued that Tempinski intended to assist if the problems with the signals persisted, but he was not given that opportunity to assist or, in the alternative, call in another Maintainer. Because of the Claimant's failure the morning traffic was significantly slowed. Therefore, it concluded that the discipline should not be disturbed.

After thoroughly reviewing the transcript and record evidence, the Board finds that at about 8:07 P.M. on the evening in question, the Claimant called Supervisor Tempinski to advise him he was having problems with the signals at Mile Posts 13.9 and 15.1. Tempinski made some suggestions as to how the Claimant might approach the problem. According to Tempinski that was the only call he received from the Claimant regarding the signals.

The Claimant testified that Tempinski told him he would call him back. However, Tempinski's testimony is directly contrary, as he rebutted that testimony, when he stated he told the Claimant to call him back if he could not repair the problem.

The Claimant further testified that he did not call his Supervisor back because he knew Tempinski “. . . wasn't feeling too good.” However, Supervisor Tempinski testified: “No, I didn't say anything about feeling ill.”

Our comparison of witnesses' testimony leads to the conclusion that the Claimant's testimony was self-serving and not credible.

The record further reflects the fact that when the Claimant's tour of duty ended at 2:00 A.M. on April 25, 2006, the signal failure had not been corrected and he did not notify his Supervisor of the situation. It was also proven that Supervisor Tempinski had no reason to believe that the signal problem had not been corrected before the end of the Claimant's shift. As noted above, he had directed the Claimant to call him back if he could not make the necessary repairs. Despite the Organization's vigorous effort to defend the Claimant, it is clear that the Carrier met its burden to prove that the Claimant was guilty as charged.

The only issue remaining is whether the discipline assessed was proper. Our review of the discipline imposed reveals that it was in accordance with the Carrier's Progressive Discipline Policy. Therefore, the Board finds and holds that the discipline was appropriate because it was not arbitrary, capricious or excessive.

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 29th day of June 2010.