

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40570
Docket No. SG-40124
10-3-NRAB-00003-070353
(07-3-353)**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 M. S. Grant and B. J. Pierre for payment for any lost wages with any mention of this matter removed from their personal records and otherwise made whole as required by Rule 54 - Exoneration, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it issued the excessive discipline of a 10 day suspension to Claimant Grant and a 10 day suspension with a two year restriction to a Signalman's position for Claimant Pierre without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation that started on March 8, 2006 and concluded on May 22, 2006. Carrier's File No. 11-7-561. General Chairman's File No. 10-D-06 PIERRE AND GRANT. BRS File Case No. 13866-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 February 13, 2006, a Notice of Investigation was hand delivered to Claimant B. J. Pierre concerning the following charge:

“ . . . The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, with your alleged failure to properly participate in your Thursday, February 9, 2006 morning job briefing. In addition you are hereby charged with (ordering the) improper placement of flag protection for your gang per Form "B", Line #1 dated Thursday, February 9, 2006. You are also charged with negligence in performing your duties as the foreman in charge of gang 7 when you allegedly failed to properly comply with all your required duties as the foreman in charge of Form "B", Line #1 dated February 9, 2006. Therefore, you are hereby charged with alleged violation of Metra Employee Conduct Rules III. General Rules "B" and Rule "N", Paragraph #3, Items #1 and 5.4.3-Display of Yellow Red Flags, 5.4.7 Display of Red Flag, Roadway protection Rule 142.2.1- Employees and Contractors "A" - Responsibilities #2, #4, #5 and #9 (a) and (b), and Initial Job Briefing 142.3.1.”

On the same date Claimant M. S. Grant was issued the following charge:

“ . . . The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, with your alleged failure to properly participate in your Thursday, February 9, 2006, morning job briefing. In addition you are hereby charged

with improperly placing flag protection for your gang per Form 'B,' Line 1 dated February 9, 2006. Therefore, you are hereby charged with alleged violations of Metra Maintenance of Way Rules #5.4.3- Display of Yellow Red Flag and 5.4.7 Display of Red Flag, Roadway protection Rule 142.2.1-Employees and Contractors 'A' - Responsibilities #2, #4, #5 and #9 (a) and (b) and Initial Job Briefing 142.3.1."

The joint Hearing took place over several weeks, beginning on March 8, 2006. It continued on March 20 and 31 and was completed on May 22, 2006. The parties agreed to continuances on each occasion.

On May 30, 2006, the Claimants were notified that they had been found guilty as charged and the Carrier assessed Claimant Grant a 10-day suspension and Claimant Pierre a 10-day suspension with a two year restriction to a Signalmen's position.

It is the position of the Organization that the Claimants were denied their Agreement due process rights because the Assistant Hearing Officer conducted private conversations with a witness who was scheduled to testify at the Hearing.

On the merits, the Organization argued that the sole purpose of flags being required was to provide the train crews, as well as other rail equipment, a visual reminder that they were approaching a restricted track in addition to the written order (Track Warrant - Track Bulletin Form B) informing those crews of restricted track limits wherein work was being performed on a particular day. It further argued that despite the fact that the Claimants might have made a minor mistake in placing flags, which according to the Organization was a common occurrence, did not diminish the fact that trains in the area were aware of where work was to be performed that day, and they had to contact the employee in charge before proceeding between MP 14.8 and MP 15.0, no matter which direction they were traveling. Additionally, it argued that at no time while the Claimants were in the process of setting the flags was anyone working foul of the track and the reason for the delay of two trains was because the Carrier failed to provide a reliable radio

that was capable of communicating with trains and the Dispatcher. It closed by asking that the discipline be set aside and the claim sustained as presented.

It is the Carrier's position that the evidence indicates that both Claimants admitted at the Hearing that they did not place the flags correctly and two of the four were not placed on time, in accordance with the Form B Train Order. In addition, Claimant Pierre testified that she did not go over the specific mile posts where the gang was to place flags because she was unsure herself where they needed to be placed. The Carrier concluded that the discipline should not be disturbed.

The Board thoroughly reviewed the transcript and the record of evidence and has determined that no procedural error occurred. The Claimants were not denied their Agreement due process rights. Accordingly, the Board will resolve the case based upon its merits.

The facts of the case are that Claimants Grant and Pierre were working as Signalman and Signal Foreman, respectively, headquartered at Blue Island, Illinois, on the Rock Island Engineering District. Both Claimants were assigned to Signal Gang No. 7 whose task for the day in question was to install a cantilever signal at 119th Street on the Beverly District. In order to provide protection for their safety and allow for train movement while completing their task safely, a Form B Train Order was used. A Form B Train Order shifts authority over a section of track from the Dispatcher to the "employee in charge" (EIC) of the Form B. The record further reveals that a Form B Train Order was requested in advance so train crews coming on duty and persons at the Network Operations Center, such as Dispatchers, were made aware of when and where the Form B was in effect. In this instance, the Form B was in effect from 9:00 A.M. through 2:00 P.M. on February 9, 2006 between MP 14.8 and MP 15.0 on the Beverly Subdivision.

When a Form B is in effect, the Carrier's Rules require that metal "flags" or "boards" be set up alongside the track to warn oncoming traffic. They are to be placed prior to the starting time of the Form B and removed after the Form B has expired. Red boards were to be placed one mile away from the limits of the Form B in each direction, i.e., at MP 13.8 and MP 16.0.

Both Claimants admitted during the Hearing that no flags were placed on the east side of the Form B limits, and the western flags were placed incorrectly. The misplaced flags were also placed on the wrong track, one parallel to the one they planned to perform work on. The tracks that the Claimants placed flags on were on a different subdivision. The record is clear that at 9:00 A.M. when the Form B went into effect, no flags were properly placed to protect the work area from entry by a westbound movement. Failing to place "boards" when specified in the Form B or placing them at the wrong location constitutes a Rule violation. Committing this Rule violation has the potentiality for serious consequences such as placing employees who may foul the track at great physical risk and it could, as it did in this instance, delay trains coming across an unannounced yellow-red board or red board. It is clear that the Carrier met its burden to prove that both Claimants were 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.