

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40855
Docket No. SG-41132
11-3-NRAB-00003-090498**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 J. L. Duree, for all time lost, including overtime, 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 harsh and excessive discipline of a 10-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 August 12, 2008. Carrier’s File No. 1504660. General Chairman’s File No. UPGCW-68-1565. BRS File Case No. 14225-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.

This claim challenges as excessive the penalty of a Level 4, ten-day suspension imposed on the Claimant, after an Investigation, for performing work without having proper track authority in violation of Rule 42.3. The Claimant admitted at the Investigation that he mistakenly asked for foul time at CP 119, where he was during a prior shift, rather than CP 115, where he was actually working, resulting in him performing his work unprotected, and that he informed the Train Dispatcher of the error when he realized it. There were no resulting fatalities or incidents. The Investigation transcript establishes that the District Manager had issued a local directive for use of the name of the Control Point, not just the CP identifier, when seeking track authority. However, this instruction was not passed down by the Claimant's Supervisor, who was on medical leave of absence during the period, and the Claimant was unaware of it. The record indicates that this directive came after a prior incident where a miscommunication between an employee and a Train Dispatcher concerning the location of track authority resulted in a serious incident. At the Investigation, the Claimant testified that there was no confusion in his conversation with the Train Dispatcher, who gave him track authority at CP 119 which is what he asked for, and that he understood that the directive was issued to avoid similar incidents.

The Carrier argues that the Claimant's admission of guilt alone establishes substantial evidence to support the charge, citing Third Division Awards 28484 and 31492. It notes that the discipline assessed was commensurate with the seriousness of the offense, in line with its Upgrade Discipline Policy, which makes a violation of Rule 42.3 a Level 4 offense, and was reasonable and not arbitrary, relying on Third Division Award 30779 and Public Law Board No. 2283, Award 13. The Carrier asserts that this is really a plea for leniency, which the Board has no authority to grant, and which the Claimant's record does not support, citing Third Division Awards 34206 and 28484; Second Division Award 13832.

The Organization contends that the fact that the Claimant admitted to making a mistake (based on a recent prior location) and corrected it immediately,

there were no incidents or fatalities resulting, he did not receive the local instruction issued to avoid similar incidents, and his more than 12 years of service all mitigate against the imposition of the harsh penalty in this case. It asserts that the Carrier must take mitigating factors into consideration when assessing the appropriate penalty, and that its failure to do so in this case denied the Claimant a fair and impartial Investigation in violation of Rule 68, citing Third Division Awards 23298 and 33383; Second Division Award 12618.

A careful review of the record convinces the Board that the Carrier satisfied its burden of proving the Claimant's violation of Rule 42.3 by substantial evidence. As noted in Third Division Award 28484, once the Claimant admitted that he asked for track authority at the wrong location resulting in his working unprotected, a violation with potentially serious consequences, there was no need for additional proof. The fact that the Claimant did not receive the local instruction issued from his District Manager to avoid miscommunication as to location where authority was being sought is not a mitigating factor in this case, because he was not charged with violating such instruction and there was admittedly no miscommunication between the Claimant and the Train Dispatcher about where he was seeking track authority. While a ten-day suspension for an admitted mistake which was corrected as soon as the Claimant discovered it may seem harsh, there is no dispute that Rule 42.3 is a Level 4 offense under the Carrier's Upgrade Discipline Policy, and that the ten-day suspension penalty is consistent with such policy. The Claimant was informed of this fact in the Notice of Investigation, and we are unable to conclude that the Carrier's penalty determination is arbitrary or unreasonable, or that there is another basis upon which to mitigate the penalty. See Public Law Board No. 2283, Award 13. Thus, the claim is denied.

AWARD

Claim denied.

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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 11th day of January 2011.