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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40901
Docket No. SG-41010
11-3-NRAB-00003-090367**

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn 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.:

Claim on behalf of L. Barnes, Jr., 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 April 2, 2008. Carrier's File No. 11-7-663. General Chairman's File No. 13-D-08. BRS File Case No. 14207-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.

The Claimant was hired on May 1, 1987. At all times relevant to this dispute, the Claimant was assigned as a Signal Maintainer on the Electric District, on the South Chicago Branch. While working on January 3, 2008, the Claimant used an inverted milk crate as a makeshift step stool. As he stepped off of the milk crate, he felt his knee "pop" and called his supervisor to report a potential injury. The following day he received a Notice of Investigation:

" . . . to develop the facts, determine the cause, and assess responsibility, if any, in connection with your alleged failure to perform your work safely when you allegedly used a non-approved improvised device to elevate yourself while performing your duties on January 3, 2008 at 91st Street on the South Chicago Branch."

The notice charged the Claimant with violations of Metra Safety Rule 111.1, Item No. 2; Metra Safety Rule 100.9.4; Employee Conduct Rule "N," Item No. 1; and Employee Conduct Rule 3, Item B, Paragraph 1. After a Hearing held on April 2, 2008, the Carrier notified the Claimant that he was assessed a three work days deferred suspension for violating Metra Rule 111.1, Item No. 2 and Metra Rule 100.9.4 as a result of "Failure to perform your work safely when you used a non-approved device to elevate yourself while performing your duties on January 3, 2008 at 91st Street on the South Chicago Branch."

The Carrier contends that the Claimant received a fair and impartial Hearing and that the record supports the determination of his culpability and the penalty assessed. The Organization contends that the Carrier violated Rule 53 by prejudging the Claimant, imposing disparate discipline, disciplining the Claimant for having an injury, and failing to provide an impartial Hearing or to prove the charges against the Claimant.

The Board concludes that the Carrier failed to prove the Claimant committed the offense with which he was charged. The Claimant was found to have violated Rule 111.1, Item No. 2 and Rule 100.9.4, which provide:

“Rule 111.1, Item No. 2

Do not modify or manufacture a tool or safety device unless the proper authority approves the design and specifications for the tool.

Rule 100.9.4 Standing

Do not stand on objects that are not secure. Do not stand or try to stand on unsafe supports, such as boxes, barrels, chairs, stools, or improvised scaffolds.”

There is little if any dispute concerning the Claimant’s actions in this case. The Claimant admitted that he used the milk crate as a stepstool, and that he injured his knee when he stepped off of the crate. According to the Claimant’s undisputed testimony, the crate did not move or flip over.

The Claimant testified that milk crates were commonly used in his work area. Although the Claimant’s supervisor said that he had not observed employees using milk crates instead of step stools during his tenure as a supervisor, he also testified that milk crates were “commonly” used before 1994, when step stools were distributed and that he himself had used milk crates “years ago,” but he also testified that he had seen milk crates in signal houses on his territory as supervisor. After the accident, the Carrier issued two step stools to each Signal Maintainer and subsequently stenciled each Signal Maintainer’s number on a step stool, but there was no step stool or wire box available in the shed where the Claimant had his accident. The Claimant’s supervisor investigated the injury but could not determine whether the milk crate had caused the injury.

It is clear from the record evidence that the Claimant did not violate Rule 111.1, Item No. 2. He did not “modify or manufacture a tool or safety device.” The only serious question is whether he violated Rule 100.9.4, by standing on an object that was not secure, or that was an unsafe support. However, the supervisor could not say that the milk crate was the cause of the Claimant’s injury, and as the Claimant described the accident, the milk crate did not flip over or move. Instead, he felt something “pop” in his knee as he stepped off of it normally. Under all of the circumstances present here, the Board finds that the Carrier failed to present substantial evidence to support its conclusion that the Claimant violated Rule 111.1, Item No. 2 or Rule 100.9.4.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of March 2011.