

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40946
Docket No. SG-41253
11-3-NRAB-00003-100096**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Illinois Central Railroad**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of B. E. Hutchinson, for compensation for all lost wages and benefits, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 35, when it issued the harsh and excessive discipline of a 16-day suspension without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on November 12, 2008. Carrier’s File No. IC-BRS-2009-00001. General Chairman’s File No. IC-001-09. BRS File Case No. 14305-IC.”

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 suspended for 16 days not following the proper procedures for planned work and the placement of yellow/red signs and red signs on the Dubuque Subdivision between Mile Posts at 236.1 and 246.8 on September 20, 2008. At the time of the incident, the Claimant had approximately five and one-half years of service. His work record did not contain any prior instances of discipline. He was the Employee-in-Charge of placing the signs on the day in question.

According to the record of the Investigation, the Claimant was disciplined because he did not have the yellow/red and red signs in place at 7:30 A.M., which was the starting time of his planned work period. He was cited for violating Operating Rule 1101, as well as several other more general Rules.

It is undisputed that the Claimant's planned work time did begin at 7:30 A.M. He was in the process of placing his first yellow/red sign at Mile Post 233.1 at that time when he heard his radio speaker broadcast that a train was just passing the hot box detector at Mile Post 236.1, which was three miles farther down the line from his location. The train had already passed by his location and went into his planned work limits without asking for permission to enter and proceed through. The incident came to light when the Claimant reported the error of the train crew.

Operating Rule 1100 gave the Claimant one hour before or after the beginning of his time period in which to place the yellow/red signs. It is clear that they did not have to be in place right at 7:30 A.M. Rule 1101 governs the placement of the red sign. The Rule specifies where the sign must be placed in relationship to the track. But it does not explicitly state when the signs must be in place to protect planned work. The Rule states only that the signs "... must be displayed ... only during the hours Planned Work is in effect." As written, the Rule prohibits putting up a red sign earlier than the beginning of the Planned Work period or leaving the sign up after the end of the period. More importantly, the Rule text does not appear to support the Carrier's determination that it required the Claimant to have the two red signs in place, more than ten miles apart from each other, not earlier than 7:30 A.M. nor later than 7:30 A.M. The Carrier's application of the Rule in this manner, which is beyond what the Rule actually states, creates a practical impossibility.

It is also undisputed in the record that the Claimant did have both red signs in place before he or any members of his gang began fouling the track limits to perform their planned work.

Given the foregoing circumstances, we are compelled to find that the record does not contain substantial evidence in support of the Carrier's disciplinary determination. Accordingly, the claim must be sustained.

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 24th day of March 2011.