

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41454
Docket No. SG-41507
12-3-NRAB-00003-110109**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Port Authority Trans-Hudson Corporation)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Port Authority Trans-Hudson:

Claim on behalf of S. Finan, for all lost wages, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Article X (Discipline - Hearings), when it failed to provide a fair and impartial investigation evident when Carrier issued the harsh and excessive discipline of a one workday suspension from service without pay, and four days held in abeyance for one year, as a result of an investigation held on September 16, 2009. BRS File Case No. 14483-PATH.”

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 July 25, 2009, Signal Testman I Scott Finan was called out to repair wiring at a signal location. After working on the wiring, the Claimant failed to complete the stipulated tests on the wiring. On August 2, 2009 the signals at the location in question did not operate correctly. None of this is disputed. The Claimant was charged and a Hearing was held on the property on September 16, 2009. The charge letter specified that the Hearing was “. . . for an investigation of the charge that you violated Rules D.5, E.1, [and] 819 of the PATH Book of Rules.”

The cited Rules read, in relevant part, as follows:

“Rule D.5:

Employees must perform the basic functions of their position in an acceptable manner and must conduct themselves so as not to waste the assets of PATH in order to retain their employment.

Rule E.1:

To enter or remain in the service, employees must be of good character and must not act with indifference or neglect, or commit a dishonest, immoral, illegal, violent, insubordinate, disruptive, destructive or reckless act

Rule 819:

All work performed must conform to Signal Division and FRA standards and procedures and no unauthorized revisions to equipment or circuits are permitted”

After the Investigation, on October 9, 2009, the Carrier assessed the Claimant a five-day suspension without pay. One day of the suspension was served immediately, with the remaining four days held in abeyance for one year.

The Organization initially contends that the Carrier exhibited pre-judgment in the Charge Letter when it stated “. . . for an investigation of the charge that you violated” It contends that the phrase “you violated” clearly indicates that the Claimant had already been determined to be guilty prior to the Investigation being held. It further contends that this finding of guilt by the Carrier in its initial letter involves the exact charges for which a fair and impartial Investigation was supposed to be held, in accordance with the Collective Bargaining Agreement (which requires fairness and impartiality in the proceedings). The Organization asserts that it is evident that the above-quoted statement establishes prejudgment.

In this industry, unlike others, it is the accepted practice that a Carrier officer is charged with the responsibility of conducting the investigation into an incident. Most collective bargaining agreements require, as is the case here, that this be done in a fair and impartial manner. Boards, such as this one, then sit as an appellate tribunal to review any assessment of discipline resulting from such processes. It is true that the wording of a charge letter can be indicative of lack of fairness or impartiality. Many tribunal Awards have so held. Each case, however, turns on the specific wording of the charge letter. Words such as “when you falsified” or “when you did . . .” have been enough to call into question the fairness and impartiality of the process. Many carriers have taken to writing charge letters which say “. . . when you are alleged to have . . .” or words along such lines.

In the instant case, the Carrier’s charge letter said “. . . for an investigation of the charge that you violated” From our vantage point, a plain reading of those words does not indicate pre-judgment. It is clear that the purpose of the Claimant’s Hearing was to investigate the charges in question. These words do not, in our opinion, reveal a lack of fairness or impartiality.

For these reasons, the preliminary objection by the Organization must fail. As a result, we now turn to the merits of the case.

As stated earlier, the key facts of the case are not in dispute. The Claimant admittedly failed to perform the required signal tests. The signals did not work properly as a result of the improper wiring. This would have been discovered, but was not, due to the lack of testing. In mitigation, the Claimant contends, and the Organization urges, that he was under a lot of pressure from the Operating

Department to get the signals back in working order and to release the track for train traffic. While this may be true, it does not obviate the need for following the proper test procedures.

The Organization also contends that the discipline assessed is harsh and excessive for such a long-term employee. Conversely, the Carrier asserts that the Claimant's work record was considered in assessing the five-day penalty.

In view of all of the circumstances, the Board finds that the discipline assessed is neither in violation of the Agreement, nor excessive. Accordingly, the claim before the Board is denied.

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 16th day of October 2012.