

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41799
Docket No. SG-41821
13-3-NRAB-00003-120079**

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Pan Am Railways/Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Pan Am Railways:

Claim on behalf of J. R. Lavallee, for any mention of this discipline to be removed from his record in accordance with Article 19, account Carrier violated the Signalmen’s Agreement, particularly Article 19, when it inappropriately and without just cause issued a three-day suspension (deferred for six months) to the Claimant as a result of an investigation held on October 29, 2010. Carrier’s File No. S-10-01. BRS File Case No. 14580-PanAm.”

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 October 1, 2010, Signal Maintainer J. R. Lavallee and another employee were called out to repair a code line at approximately 10:30 P.M. in order to restore the code and signal system after a theft of wire. Claimant Lavallee called his supervisor to complain about the dangerous working conditions that he found, which involved working in the dark on wet, freshly cut brush on an embankment. His supervisor sent two additional employees to help with the job and informed the Claimant that the system had to be restored to full service that night. The Claimant used his own personal headlamp, which was brighter than the Carrier's flashlight, and, while pulling wire on a very steep embankment, he lost his footing due to the wet, freshly cut brush, and fell down the hill, spraining his ankle.

As a result of this incident, the Claimant was instructed to attend a Hearing concerning his alleged violation of Safety Rule PGR-O, which provides that employees must exercise care to prevent injury to themselves while performing their duties. A Hearing was conducted on October 29, 2010 and, by letter dated November 22, 2010, the Claimant was found guilty of the charges and assessed a three-day suspension (deferred for six months).

The Carrier contends that the Claimant was afforded a fair and impartial Hearing, and presented no defense to the charges. It relies upon the evidence of its supervisor that this was the same work as was done all the time in unfavorable conditions, and that additional manpower was sent to help the Claimant when he complained. The Carrier notes that the Claimant did not make a good faith challenge or refuse to work, and stresses that the fact that he fell is not indicative of an inherently nefarious situation, but of the Claimant's failure to work safely. It asserts that the discipline imposed was minor, reasonable, and progressive.

Conversely, the Organization argues that the Claimant acted in the only way he could, by properly reporting and identifying a dangerous condition to his supervisor, who, without checking out the safety of the location, directed him to get the work done that night and informed him that he would send help. It maintains that a good faith challenge applies to On Track Worker safety and that the Claimant could not have refused to perform the work without being insubordinate. The Organization asserts that the Carrier did not meet its burden to prove that the Claimant failed to work safely, and the fact of an injury is insufficient to place fault with the Claimant, especially when he fell as a result of the dangerous conditions reported to his supervisor.

A careful review of the record convinces the Board that the Carrier failed to meet its burden to prove that the Claimant was guilty of violating Safety Rule PGR-O on October 1, 2010 by substantial evidence. The Claimant properly reported what he viewed as dangerous working conditions to his supervisor and complied with his directive to perform the work anyway. There is no record evidence to support the conclusion that the cause of the Claimant's injury was his failure to work carefully, rather than the dangerous working conditions previously reported. Under such circumstances, the evidence does not substantiate the charge or any basis for discipline. 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 17th day of December 2013.