

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc. (former Baltimore & Ohio  
Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the CSXT (B&O Railroad):

Claim on behalf of T.C. Reeder, for rescission of discipline assessed him and payment of thirty (30) days pay at his pro-rata rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 50, 51, 52 and 53, when it assessed him with a thirty (30) day suspension and did not find him guilty as charged." Carrier file 15 (89-58). BRS file Case No. 8060-CSXT.B&O.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

This case involves Carrier's imposition of a thirty day suspension of the Claimant following Investigation on June 22, 1989, for failure to perform required tests on his territory in accordance with both Federal Railroad Administration (F.R.A.) regulations and CSX Transportation Rules and Instructions 1.203 and 1.210 which are quoted below.

During June 1989, when an F.R.A. inspector randomly reviewed the Carrier's signal test reports, the Carrier was charged with four Code 1 violations on District No. 5, due to required F.R.A. tests which had not been performed by the Carrier during the first quarter of 1989. As a result, the Carrier's Signal Supervisor, who had responsibility for that particular district, reviewed the various first quarter reports of Claimant, the Signal Maintainer for that district.

On January 2, 1989, Claimant began working as the signal maintainer with maintenance responsibility for the assigned territory on District No. 5 at Sidney, Ohio. Claimant's territory required 37 ground tests, 35 shunt fouling circuit tests and 35 switch circuit controller tests be made each quarter; however, according to the Carrier, during the first quarter the Claimant made none of the 107 required tests. Further, the Carrier submits that 21 switch obstruction tests were required on the Claimant's territory each month, and that during the same first quarter period, Claimant had completed only 36 of the 63 total such tests required by the F.R.A. The Claimant was charged with failure to make tests in accordance with F.R.A. regulations and Carrier Rules which resulted in the four Code 1 violations by the Carrier.

An Investigation was held on June 22, 1989, at Deshler, Ohio, following which Carrier found Claimant guilty. A thirty day suspension, along with a restriction to positions working under the direction of a Leading Signalman or Foreman was consequently imposed.

The Carrier notes Rules 50 and 51, the controlling discipline/appeal Rules, quoted below:

"RULE 50 - DISCIPLINE-INITIAL HEARING

(a) An employee who has been in the service more than thirty (30) days will not be disciplined or dismissed without a fair and impartial hearing, at which hearing he may be assisted by one or more duly accredited representatives. Suspension in proper cases pending a hearing, which shall be prompt, shall be deemed a violation of this rule. The employee will be advised in writing at least forty-eight (48) hours prior to such hearing of the exact charge or charges made against him. At such hearing he shall have the right to call witnesses to testify in his behalf and he and his representatives shall have the right to cross-examine witnesses who are used in support of the charges.

(b) The hearing will be held within ten (10) days of the date when charged with the offense. A written decision will be rendered within thirty (30) days after completion of the hearing. If discipline is assessed, the decision will state the reason therefor.

(c) An employee who considers himself unjustly treated shall have the right of hearing and appeal as provided in this Rule 50 and 51 if written request is made to his immediate supervisor. If hearing is requested it will be held within ten (10) days of the date of the request and all of the time limits provided in Rule 51 will be applicable in the event of appeal.

(d) A transcript will be made of the evidence taken at the hearing and copies will be furnished the employee and his representative.

RULE 51  
HANDLING OF APPEALS

(a) An employee dissatisfied with the decision will have the right of appeal, individually or through his duly accredited representative, in regular order of succession and in the manner prescribed up to and including the highest official designated by the Company to whom appeals may be made.

(b) An employee dissatisfied with the initial decision shall have a fair and impartial hearing before the next higher officer provided written request is made to such officer by the employee or his duly accredited representative (with copy to the officer whose decision is appealed) within thirty (30) days of the date of the initial decision. Such hearing, which will be held within ten (10) days after date of appeal, will be based on the record of the initial hearing. Decision on appeal and any subsequent handling will be governed by the provisions of Rule 54 except that that rule shall no apply to requests for leniency.

(c) Except as otherwise provided in Rule 28(h) disputes involving application of rules governing rates of pay and working conditions at other than the Signal Shop will be handled with the Division Engineer and on appeal to the Assistant to Vice President-Labor Relations. Any disputes, including discipline, arising at the Signal Shop will be handled with the Superintendent-Signals and on appeal to the Assistant to Vice President-Labor Relations.

Except as otherwise provided, disputes involving discipline will be handled with the Superintendent, General Manager of the Region involved (except Buffalo Division will be handled with the General Manager of the Northern Region) and the Assistant to Vice President-Labor Relations.

(d) Time limits provided in Rules 50(b) and 51 may be extended by mutual agreement."

It is the Carrier's position that the Claimant was afforded a fair and impartial investigation in the disciplinary action and was proven guilty of serious charges for which the disciplinary action taken was entirely justified and, according to the Carrier, lenient in view of the potential physical danger of faulty signals to other employees and the enormous amount of liability to the Carrier.

For its part, the Organization cites Rule 50, supra, and Rule 52 which states:

"RULE 52  
EXONERATION

If the charge against an employee is not sustained, it shall be stricken from the record. If by reason of such unsustained charge, the employee has been removed from the position held, reinstatement will be made and payment allowed for the assigned working hours actually lost, less any earnings in or out of the service."

It is the position of the Organization that the Carrier violated the Agreement, particularly Rule 50, by failing to prove that discipline was warranted against the Claimant. It is also the position of the Organization that the discipline imposed should be set aside because the Carrier failed to provide a fair and impartial hearing due to the transcript being less than complete and accurate. Therefore, the Organization asks that the discipline assessed the Claimant be set aside.

The Board finds no fatal procedural defect in this record. Turning to the merits, the fact that required tests were not completed is not in dispute. The Claimant readily admitted that he did not complete tests that were required as part of his job. However, the Claimant demonstrated that the Carrier was constructively aware of his dereliction, through the Supervisor, who simply instructed him to make notations on his paperwork stating "tests not done, not enough time."

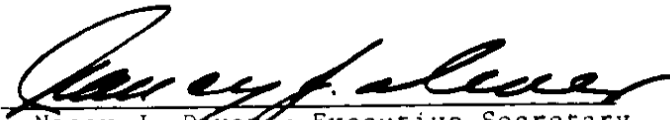
It is evident to this Board that both Claimant and Carrier, through its Supervisor, shoulder a portion of the blame. The Claimant did not fulfill the responsibilities entailed in his position as Signal Maintainer. However, it is clear from the transcript that his Supervisor was aware of and ignored the fact that the Claimant, for whatever reasons, was not fulfilling the requirements of his position. There is no question of the danger imposed to the Carrier, fellow employees, and the general public if signals are not properly maintained. Claimant's culpability can be justified and warranted discipline, but because his Supervisor condoned or ignored his dereliction and then treated him as a scapegoat, this Board will modify the disciplinary penalty by reducing the suspension from 30 to 20 days and lifting the restriction on future assignments.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.