

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31064
Docket No. SG-30437
95-3-92-3-185

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Union Pacific Railroad

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the UP Railroad:

- (a) Claim on behalf of W.J. Peters, for fifteen (15) days pay and the removal of any reference of discipline from his record, in connection with a hearing held on November 14, 1990, because the Carrier violated the current Signalmen's Agreement, particularly Rule 40, when it failed its burden to prove the charges against him and also failed to properly advise him of the precise charges five days prior to the hearing. Carrier File No. 910275. BRS File No. 8603."

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 waived right of appearance at hearing thereon.

Pursuant to proper notice dated October 30, 1990, the Carrier charged Claimant with unsatisfactory performance in executing his duties as a Signal Maintainer. The Carrier brought this charge against Claimant after a Federal Railroad Administration (FRA) Inspector detected one code one defect and various code two defects on Claimant's territory. The FRA fined the Carrier \$2,000 for the

code one violation. The issue in this case is whether the Carrier presented substantial evidence proving that Claimant should be held responsible for the 11 violations which the FRA Inspector found on October 22 and October 23, 1990.

A code one violation is critical. It means that the defect poses an immediate hazard to trains, railroad employees and the public. On one of the switches in Claimant's territory, the lock dog of the power switch machine passed through the lock rod. The cause of this condition was a worn lock rod which, in turn, was attributed to a pull-apart in the rail.

Claimant testified at the November 14, 1990 Investigation that he inspected and tested the switch on September 12 and 13, 1990, and the test results disclosed that the machine met applicable standards. On the other hand, the Signal Manager testified that the worn lock rod could not have occurred suddenly. In his expert opinion, the defective condition slowly developed over a number of months. He intimated that if the defect had arisen suddenly, the switch would have locked and Claimant would have been called for a repair. Similarly, the Signal Foreman testified that the code two violations, mostly minor problems, were also defects that incrementally developed over time. However, the Manager conceded that the fouling wires of one switch could have been severed by dragging equipment rather than loosening over time. The Signal Manager also related that the FRA Inspector found many more defects on Claimant's territory than on nearby territories maintained by other signal employees even though Claimant's territory contains fewer switches than surrounding territories. The Manager also stated that he afforded Claimant advance notice (on or before October 15) of the impending FRA inspection.

With regard to the other violations, Claimant testified that, when he last inspected the equipment on his territory, all switches and signals operated in a normal and proper condition. Claimant asserted that he was on vacation for seven days and working on assignments on other territories on 12 of the 24 work days prior to the inspection.

This Board finds that the Carrier presented substantial evidence proving that Claimant was guilty of the charged offense. While the Manager recognized that it was possible for one or two of the defects to arise quickly, he gave plausible reasons why most, if not all, the defects gradually developed over a lengthy period of time. Yet, Claimant's mid-September tests did not detect the patently deteriorating condition of several switches on his territory. Since this Board does not sit to resolve conflicts in testimony, the Hearing Officer could attach more probative weight

to the Manager's testimony as opposed to Claimant's hypothetical assertions concerning the genesis of the defects.

More importantly, the FRA Inspector detected an abnormally high number of defects on Claimant's territory relative to surrounding territories. While the Organization argued that this fact remained unproven since the Carrier did not bring in the FRA reports from surrounding territories, the Manager's testimony on this point went unrefuted. The sheer number of violations on Claimant's territory is strong circumstantial evidence that Claimant was neglecting his duties by not inspecting all equipment or his inspections were inadequate and cursory. The Carrier lacks the capacity to ever directly prove that Claimant made a careless inspection or test because, to do so, a Carrier supervisor would have to follow Claimant all day while he performed his duties. A Maintainer would not have 11 violations on his territory if the Maintainer was performing his duties competently and conscientiously.

Even though Claimant was on vacation and sometimes assigned to tasks on other territories, he had ample opportunity to carefully inspect the equipment on his territory prior to the inspection. The Carrier gave Claimant ample advance notice of the impending inspection. The record is void of any evidence that Claimant exerted any efforts during the week prior to the FRA inspection to remedy any of the problems on his territory.

A 15 day suspension was commensurate with the gravity of the proven offense. Although Claimant apparently had an unblemished work record, the suspension should encourage him to conduct thorough and proper inspections of his equipment. Moreover, Claimant was responsible for a serious code one violation.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.