

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31656
Docket No. SG-32055
96-3-94-3-429**

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: (
(Southern Pacific Transportation Company (Western Lines)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP):

Claim on behalf of R. Huckaby to be made whole for all time and benefits lost as a result of his suspension from service in connection with an investigation conducted on August 11, 1993, and to have any reference to this discipline removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline without meeting the burden of proving the charges against the Claimant. Carrier's File No. SIG D93-8. General Chairman's File No. SWGC-683. BRS File Case No. 9373-SP."

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.

By letter dated June 14, 1993, the Claimant, a Signal Maintainer with over 20 years service, was notified by the Carrier to attend a formal Investigation "to determine your responsibility, if any, in connection with your alleged failure to properly test signal aspect after you allegedly replaced the lunar aspect lens with a green aspect lens on or about May 27, 1993 at the east switch Connell. Your alleged failure to properly test signal aspect resulted in Train 01-LFASQ-08 ... receiving a incorrect signal aspect into the siding at the east switch Connell on June 9, 1993, at approximately 3:45 a.m." After requests for postponement, the hearing was held on August 11, 1993. A transcript of the Investigation has been made a part of the record. The Claimant received notice dated August 16, 1993, that he was to be suspended for 30 days for his failure to properly test signal aspect after replacing the wrong aspect lens in violation of Rules 1.2.8.1 and 1.5.4.53 of the Chief Engineers Instructions For The Maintenance of Way and Structures and Engineering.

A review of the record reveals that the Carrier's finding of guilt was based solely upon Supervisor LeBlanc's version of a telephone conversation he had with Claimant the morning of the incident when Claimant was home sick, as well as a statement made by the Claimant to LeBlanc at the site of the signal box, wherein Claimant allegedly admitted changing the lens and failing to properly test it. LeBlanc admitted that any signal employee could have changed the lens in question, although it was in the Claimant's area of responsibility. Claimant denied making the statements attributed to him by his supervisor, and presented evidence corroborating his contention that he only changed a light bulb at East Connell on May 27, 1993, not an aspect lens. Claimant's evidence that he told LeBlanc in their telephone conversation that he had previously changed lens' at West Connell, was substantiated by records indicating such work was performed by him in February, 1993. The record also establishes that it is not required that employees make signal tests when they only change a light bulb, as it is when they change an aspect lens.

The Organization argues that there was apparently a misunderstanding between Claimant and his supervisor concerning his admission of changing an aspect lens at West Connell rather than East Connell, and his comment that he changed a light bulb

at East Connell. It argues that the Carrier failed to present substantial evidence of the Claimant's guilt in this case. The Carrier contends that the Board cannot properly resolve conflicts in evidence, or overturn a decision of a Carrier based upon them.

While long established precedent reveals that this Board cannot set itself up as a trier of fact when confronted with conflicting testimony, see Third Division Award 25102, it also recognizes that it is the responsibility of the Carrier to adduce substantial evidence in support of any discipline imposed. See Third Division Award 11626. If it were only the conflict in the version of the conversations between the Claimant and his supervisor concerning the Claimant's admissions of guilt that were present in the record, the Board would be bound to accept the Carrier's determination as reasonable. However, weighing against LeBlanc's total reliance upon Claimant's contested admissions, is the direct evidence of Track Inspector Lowry, who accompanied Claimant to East Connell on May 27, 1993, that the Claimant only replaced a light bulb on that date, and did not have any signal lens' in his possession on that occasion. When coupled with the corroboration of Claimant's assertion that he in fact changed a signal lens earlier at West Connell (and that this is what he was referring to in his conversation with his supervisor), as well as the admission that the signal lens in issue could have been changed by any signal employee, this Board is of the opinion that the Carrier failed to prove by substantial evidence that the Claimant replaced the wrong aspect lens at East Connell on May 27, 1993 or failed to properly test the lens on that date. As this conclusion was the basis for its imposition of the 30 day suspension being protested herein, the claim will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders than 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 29th day of August 1996.