

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31686
Docket No. SG-31816
96-3-94-3-80**

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

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (UP):

Claim on behalf of W. R. Harper Jr. for payment of all time lost during a 45 day suspension from service, account Carrier violated the current Signalmen's Agreement, particularly Rule 40, when it failed to provide the Claimant with a fair and impartial investigation and then abused its discretion in disciplinary matters by suspending the Claimant without proving its charges against him." Carrier's File No. 920536. BRS File Case No. 9226-UP.

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.

From all of the evidence, the facts are that on May 27, 1992, the Claimant was instructed by Carrier officers to help move trains through the interlocking facility at Fremont, Nebraska. In performing his duties the Claimant contacted the train dispatcher and was informed that two westbound trains were being held due to track work. The taped transcript indicates that the track would be clear for "a good hour." The Claimant altered Signal 20 changing the required stop to indicate a proceed through the interlocker. Both trains proceeded without incident.

The instant claim materialized when a Fremont Local Engine working the Valley unexpectedly returned eastbound to Signal 20 which now displayed a false proceed signal. The Carrier suspended the Claimant from service pending an investigation for alleged manipulation of the normal function of the signal which caused a false proceed signal. Claimant was suspended on May 27, 1992. A Hearing was held on June 4, 1992. By notice of June 12, 1992, the Claimant was found guilty of violating GSE Instruction No. 505 as revised and GSE-629, General Rules for Relays, S W Circuit Controller and assessed 30 days actual suspension.

The Organization raised serious issues during the progression of this claim as to procedures, merits and assessed discipline. Specifically, the Organization argues the lack of a fair Hearing in violation of Rule 40 due to the Carrier's failure to specify exact charges, withholding of taped evidence and the introduction of incomplete materials relevant to the facts. The Organization maintains that the actual facts document that the Claimant was under the orders of his superiors to turn the relay out of position to expedite the movement of trains. Such action, which the Carrier deems violative is the practice on the property. A review of the full facts by the Organization, including the actions existing that day by the UP track gang, the C&NW track gang, the manager of train operations, dispatcher and work load do not confirm a violation. The Organization asserts however, that even if the Claimant is partially responsible, the assessment of discipline is excessive.

This Board has reviewed carefully each of the Organization's arguments in light of the Carrier's position that the Claimant received a fair hearing, was found guilty as charged and assessed lenient discipline for conduct which could have "produced catastrophic consequences." The Carrier maintains that the Claimant de-energized the OS Relay providing a false clear signal and "took no safety precautions whatsoever."

The Board finds no procedural error evidenced in this record which precludes a decision on merits. The tape was available and no evidence points to prejudicial withholding to the detriment of the Claimant's rights. The Board finds no language in Rule 40 requiring the rules to be explicitly stated and nothing that suggests the Claimant was unaware of the charges against him.

In considering the merits, the Board has studied the transcript and finds that the Carrier has provided sufficient probative evidence to support the conclusion of guilt. The Claimant admits to contacting the dispatcher, manipulating the OS relay so that trains could proceed and then forgetting to change the relay back. As the Claimant testified:

"I just simply forgot it. I did that. There was too many movements all at once, at the same time."

As the Claimant's guilt is supported by substantial evidence of record and no procedural violations occurred, the only issue left for this Board is the discipline assessed. With respect to the quantum of discipline this Board has always held that discipline must not be arbitrary, capricious, unreasonable or unrelated to the seriousness of the offense.

A review of the full record does not find either the practice or the supervisor's order to be meaningful where neither resulted in the Claimant's forgetting to recorrect the manipulated signal function nor take further safety precautions. The Board notes that the Claimant had over thirty nine years of service with a clear record. The Board further notes that although assessed thirty days discipline, the Claimant served that thirty days in addition to the fifteen days he was withheld from service pending the determination of discipline; 45 days total.

Under all of the circumstances of this record, we find the discipline excessive. While not negating guilt, nor ignoring the Carrier's important obligation to assure the safety of its operations and employees, the record fails to support the discipline. We do not find any rebuttal to the protested 15 days held out of service pending hearing. The Board holds that the proper discipline under these instant circumstances where no evidence of further safety precautions were taken which could have resulted in a serious accident is the thirty days assessed. The Claimant's discipline is to be reduced to thirty days served and he is to be compensated for lost wages.

AWARD

Claim sustained in accordance with the Findings.

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 29th day of August 1996.