

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31729
Docket No. SG-31477
96-3-93-3-486**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago & North Western Transportation Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Co. (CNW):

Claim on behalf of D.C. Gordon, for removal of discipline from his personal record and payment of all time lost as a result of disciplinary decision of May 22, 1992, account Carrier violated the current Signalmen's Agreement, particularly Rule 51, when it failed to provide the Claimant with a fair and impartial hearing on charges of misconduct, failed to prove its charges against the Claimant, and abused its discretion in disciplinary matters when it imposed the arbitrary and capricious penalty of a five-day suspension. Carrier's File No. 79-92-51. General Chairman's File No. S-AV-80. BRS File Case No. 9112-CNW."

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.

The Claimant, a Signal Maintainer, was subject to a Hearing under the following charge:

"Your responsibility for failure to make a proper operational checkout of a standby grade crossing predictor you placed in service at Main Street in Scranton, Iowa on April 20, 1992 which resulted in activation failure of the crossing warning system."

Following the Hearing, the Claimant was assessed a five-day disciplinary suspension. According to the Carrier's Disciplinary Policy, this is the minimum disciplinary action in a "serious" matter, and it does not require a preceding Letter of Warning.

The investigation was prompted by an incident in which the Main Street Warning Gate did not come down until after a train had arrived at the crossing. It was determined that the Claimant had worked on the grade crossing predictor two days earlier.

The Hearing record demonstrates that the Claimant did, in fact, fail to follow reasonable checking procedures, as prescribed in the equipment manufacturer's instructions, after he completed his installation work. The record is not entirely clear as to whether supervisory personnel also were remiss in the same manner; even if this is so, it does not relieve the Claimant of his responsibility.

The Organization draws a disturbing inference from a waiver form offered to the Claimant prior to the Hearing. This form, which was not signed by the Claimant, would have been an admission as to the charge, acceptance of a five-day suspension, and relief from undergoing a Hearing. The Board does not agree that this form somehow constitutes the Carrier's prejudgment of the Claimant's guilt. On the contrary, it is a recognizably standard form utilized if, and only if, the employee consents to a waiver of Hearing in a disciplinary charge.

There is no basis for the Board to disturb the Carrier's disciplinary action.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of September 1996.