

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32121  
Docket No. SG-32833  
97-3-96-3-159**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc. (former Louisville and  
( Nashville Railroad Company)**

**STATEMENT OF CLAIM:**

**"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:**

**Claim on behalf of T.J. Asher for payment of 252 hours at the straight time rate and 153 hours and 20 minutes at the time and one-half rate as compensation for time lost as a result of his suspension from service from February 16 to April 3, 1995, and for his record to be cleared of all charges in connection with this discipline, account Carrier violated the current Signalmen's Agreement, particularly Rule 55, when it failed to provide the Claimant with a fair and impartial investigation within ten days of the date he was withheld from service and imposed harsh and excessive discipline in connection with an investigation conducted on February 28, 1995. Carrier's File No. 15(95-135). General Chairman's File No. 95-137-INV-15. BRS File Case No. 9692-L&N."**

**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.**

**On February 16, 1995, two Carrier Supervisors began inspecting signals, crossing gates, etc. on Claimant's assigned territory near New Orleans, Louisiana. Numerous serious FRA defects were found. Claimant was removed from service that day after having worked six hours.**

**The next day, February 17, Claimant willingly participated in a further inspection of his territory conducted by the Supervisors. Additional defects, many of which were considered unsafe for both rail and passenger traffic, were found. Claimant was questioned on February 17 about those defects, but did not provide acceptable reasons for the defects.**

**Charges were brought against Claimant on February 21, 1995 for "unsafe maintenance practices." A formal Investigation was scheduled and conducted on February 28, 1995. After this Investigation was complete, Carrier determined it had sufficient probative evidence to find Claimant guilty of the charge. As a penalty, Carrier assessed a 30 day suspension.**

**The Organization appealed the Carrier's decision claiming the Investigation was not held within ten days of the date the Claimant was first removed from service (February 16); that Claimant did not receive 48 hours advanced notice of the charges; that the charges lacked specificity; and that the Carrier failed to meet its burden of proving the Claimant was responsible for the maintenance defects on his territory.**

**The Board reviewed the record and has come to the following conclusions. First, the Claimant was not surprised or misled by the charge levied against him. Defects were verbally pointed out to the Claimant and discussed with him on both February 16 and 17 by the Supervisors. Those specific defects formed the basis of the general charge of unsafe maintenance practices. Second, Claimant was afforded a fair and impartial Hearing on those unsafe practices and was given an opportunity to respond to them. Third, Rule 55 requires an Investigation to be held within ten days of the charge date or the date the employee is withheld from service. Claimant was withheld from service on February 16 and charged on February 21. The Investigation was held on February**

28 – 12 days after the withheld from service date, but seven days after the charge date. The Board finds the Investigation was timely held within ten days of the charge date in accordance with Agreement Rule 55. Fourth, the record contains substantial evidence of Claimant's guilt of maintenance defects and practices.

Finally, these are serious offenses. It is undisputed that a faulty signaling system could cause an accident with a high potential for loss of life and property. The assessment of a 30 day suspension for such a serious matter is justified and proper in this case.

**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 13th day of August 1997.**