

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33976
Docket No. SG-34524
00-3-98-3-163**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 and Nashville Railroad:

Claim on behalf of G. Taylor for payment for all time lost (including overtime) as a result of his suspension from service from March 21 to April 18, 1997, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline against him in connection with an investigation conducted on March 26, 1997. Carrier’s File No. 15(97-84). General Chairman’s File No. 97-208-4. BRS File Case No. 10428-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.

The Claimant was serving as a Signal Maintainer working with two other employees when, on March 19, 1997, he installed temporary jumper wires so that crossing gates at the Christiana Road highway crossing would remain in the upright position until all track connections were restored. Subsequently, after those connections were restored, a passing train crew reported to the Carrier that the gates in question did not activate. Following an Investigation conducted on March 26, 1997, the Claimant was suspended for 20 working days (March 21 to April 17, 1997, inclusive). The Organization argues that the Claimant was guilty of no misconduct. Alternatively, it argues that the penalty meted out was excessive. The Carrier, on the other hand, argues that there is sufficient evidence in the record, including an admission by the Claimant, that he was guilty of misconduct and that the penalty assessed was appropriate due to the risk to life and property.

The record reflects that at two other locations the Claimant instructed another employee to restore the bells and to remove the jumpers that kept the crossing gates in the upright position. In both instances the action was taken. It is only with regard to a third location, that at Christiana Road, that there is some dispute. However, the un-refuted testimony of the Claimant is that he gave the same directions to the other employee for that site. Moreover, his testimony is un-refuted because the employee in question, who confirmed the events with regard to the first two crossings, testified only that radio reception was not very good when he and the Claimant discussed the Christiana Road crossing. Thus, based on this testimony we can only conclude that the Claimant not only did that which was adequate for two other instances, but had no reason to believe that when he acted in the same fashion with regard to the Christiana Road crossing any different result would take place. In fact, under these circumstances the only other thing that the Claimant could have done would have been to remove the jumpers himself.

Nonetheless, the Carrier argues that because the work in question was performed on the Claimant's territory and because the other employees were merely assisting him the Claimant assumed responsibility. Yet, the record clearly shows that the Claimant was not designated to be in charge of the crew's activity. Accordingly, we do not believe that this record permits us to conclude that the Claimant acted so negligently that discipline was in order. Therefore, it must be set aside.

AWARD

Claim sustained.

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 28th day of March, 2000.