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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35609
Docket No. SG-35500
01-3-99-3-417

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Co. (Former Southern Pacific):

Claim on behalf of D. E. Roper for payment of all time lost and benefits as a result of his suspension from service for 5 working days and for any reference to this matter to be removed from his 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 its charges in connection with an investigation conducted on May 20, 1998. Carrier’s File No. 1136204. General Chairman’s File No. SWGC-1797. BRS File Case No. 10945-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 were given due notice of hearing thereon.

By decision letter dated June 2, 1998, the Claimant was found to have violated Rule 1.13 on March 31, 1998 when men working under his direction cut a working signal cable. The basis of the discipline was the failure to properly locate the cable prior to digging with a backhoe.

The Organization's procedural challenge to the discipline lacks merit. It is well settled that the mere fact that a Hearing Officer serves other roles in the disciplinary process does not, by itself, deny an employee a fair and impartial Investigation. As long as the conduct of the Hearing Officer is above reproach in each role, there is no denial of due process. Our review of the record does not reveal any significant shortcomings in the Hearing Officer's behavior.

The Organization also challenges the discipline on the merits by contending the Carrier did not satisfy its burden of proof requirements. On this record, we must agree. Although the Claimant was charged with a violation occurring on March 31, 1998 and was found guilty of a violation occurring on March 31, 1998, the record addresses events surrounding April 22, 1998. The transcript contains eight testimonial references to a specific date. The references on pages 14 and 44 clearly refer to a cable cut on April 22, 1998. The other references to April 22, 1998 found on pages 10, 11, 22, 57, and 69, while not so direct, allude to other facets of the Investigation focused on that date. Finally, the remaining reference on page 58 appears to be a speech error reference to April 22, 1998 when it states as follows: "... April 2nd (sic), 1998."

Given the state of the Hearing transcript, we do not find it to contain substantial evidence of the Claimant's culpability on March 31, 1998. Accordingly, the Claimant's discipline must be rescinded and he must be made whole for all losses. In addition, any references to the rescinded discipline must be expunged from the Claimant's employment records.

AWARD

Claim sustained.

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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 24th day of July, 2001.