

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35610
Docket No. SG-35501
01-3-99-3-418

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 any reference to a “Level 2” discipline 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 discipline without meeting the burden of proving its charges in connection with an investigation conducted on May 20, 1998. Carrier’s File No. 1136205. General Chairman’s File No. SWGC-1767. BRS File Case No. 10946-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.

The Claimant was observed by a Carrier Official using a chain saw on February 25, 1998 without wearing the proper safety equipment. Following the Investigation, the Claimant was assessed a disciplinary penalty consisting of a one-day alternative assignment with pay to develop a Corrective Action Plan.

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 requirement. Once again, we must disagree. The testimony of the Carrier's signal construction manager constitutes substantial evidence in support of the charge. The thrust of this testimony is that the Claimant was verbally instructed, prior to February 25, 1998, that he must be wearing chaps whenever using a chain saw. The Claimant's admitted failure to do so thus violated Carrier's Rule 1.13 requiring employee compliance with instructions.

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 24th day of July, 2001.