

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36229
Docket No. SG-36407
02-3-00-3-671

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway (former Atchison,
(Topeka & Santa Fe Railway)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

Claim on behalf of R. D. Lemons and K. L. Pfalmer for removal of Level 1 Formal Reprimands and the three year probationary periods from their personal records, account Carrier violated the current Signalmen's Agreement, particularly Rule 41, when it issued discipline against the Claimants without meeting the burden of proving the charges against them, and without benefit of a fair and impartial investigation, in connection with an investigation held on August 9, 1999. Carrier File No. 35 99 0020. General Chairman's File No. BRS 9903341. BRS File Case No. 11343-ATSF.”

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 Claimants in this discipline case were working as Acting Foreman and Signalman respectively on June 29, 1999. During their tour of duty, they were engaged in the installation of steel tie ducts which work required the removal of the ballast and earth under the rail and tie bed. At the end of their tour of duty on June 29, a three and one-half foot hole was left unfilled under the track. Approximately one and one-half hours after the Claimants left the unfilled hole under the track, a derailment occurred at the location of the unfilled hole. Subsequently, a formal Investigation was conducted on August 9, 1999 to determine facts and responsibilities in connection with the derailment.

The Claimants appeared as instructed and participated in the investigatory Hearing. They were properly represented throughout the Hearing. They testified on their own behalf and were permitted to cross-examine witnesses who testified. From the record, it is apparent that the Claimants were accorded all due process rights to which they were entitled under the terms of the negotiated Rules Agreement.

Following completion of the investigatory Hearing, the Claimants were notified by letter dated September 8, 1999 that they were each assessed discipline by a Level 1 - Formal Reprimand and were each assigned a probationary period of three years. The discipline assessed was appealed on behalf of the Claimants through the normal on-property grievance procedures. Failing to reach a satisfactory resolution of the issues on the property, the dispute has come to the Board for final and binding resolution.

In this, as with any discipline case, the Board will not substitute its judgment for that of the disciplining authority unless there are clear and convincing indications that the employees disciplined were not accorded their Agreement due process rights, or that there are indications that the discipline assessed was harsh or excessive, or that there is less than substantial evidence to support the conclusions which led to the discipline.

From a review of the case file in this dispute, the Board is convinced that there is more than substantial evidence - including the candid testimony of the Claimants - attesting to the fact that they did not properly refill the hole under the track which they had created. Their testimony to the fact that they had intended to go back to put ballast in the hole if time permitted but did not do so because they had reached the end of their tour of duty, as well as the Acting Foreman's admission that he had not checked the

work which had been performed by the other employees are clear indications of dereliction of duty and that the proximate cause of the subsequent derailment was the admittedly unfilled hole under the track. The discipline as assessed was not harsh or excessive. The Board cannot, on the basis of this case record, justify any change in the discipline as assessed.

The claim as presented is denied.

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 September 2002.