

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37306
Docket No. SG-37572
04-3-02-3-669

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Baltimore & Ohio
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of D. E. Podlesnik, for any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 50, 51, 52 and 53, when it assessed discipline of a written reprimand against the Claimant as a result of an investigation on November 1, 2001, without meeting the burden of proving the charges. Carrier’s File No. 15(01-0218). General Chairman’s File No. MDP-Insv. BRS File Case No. 12192-B&O.”

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.

During the months of May and June 2001, the Claimant was the Signal Foreman in charge of the installation of signal appliances/devices associated with the construction of the East Feltonville construction project.

Not all of the installation work supervised by the Claimant was completed per CSXT Train Control System Reference Manual Signal Standards. Specifically, at Mile Post 11.8, a switch cable was improperly installed as it was too short to reach the switch machine; at Mile Post 12.5, the track wiring was incorrectly connected to the tracks, and at Mile Post 13.8, a switch machine was improperly installed.

By letters dated July 31, October 5 and October 22, 2001, the Claimant was directed to attend an Investigation to be held on November 1, 2001, "... to develop the facts and place responsibility, if any in connection with your failure to install signal appliances/devices per CSXT Train Control System Reference Manual Signal Standards associated with the construction of the East Feltonville construction project in May and June of 2001."

The Investigation was held on November 1, 2001. In a letter dated November 26, 2001, the Carrier notified the Claimant that "facts revealed at the investigation conducted on Monday, November 1, 2001, indicated to me that you in fact failed on several occasions to adhere to CSXT Train Control Signal Rules and Instructions. As the foreman for your team it is your primary responsibility to ensure that all projects are installed in accordance with CSX Rules and Standards ... the discipline assessed for this offense is a written reprimand. This written reprimand will become a permanent part of your record. ..."

By letter dated December 20, 2001, the Organization appealed the Carrier's decision to reprimand the Claimant, contending that it had failed to meet its burden of proof and that the discipline assessed was unwarranted and excessive. The claim requested that the written reprimand be removed from the Claimant's personal record.

The Organization claims that the discipline was unwarranted. It asserts that the burden of proof in a discipline matter such as this is on the Carrier and that burden has not been met. It further contends that the Carrier imposed harsh and excessive discipline upon the Claimant. According to the Organization, the Carrier's decision to discipline the Claimant constitutes an abuse of its discretion and the Carrier should now be required to remove any and all references to the discipline and Investigation from his personal record.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Investigation in accordance with the requirements of the Agreement. The Carrier considers the Claimant guilty as charged. According to the Carrier, the evidence proffered at the Investigation demonstrates sufficient grounds to support the Claimant's culpability. The Carrier contends that the discipline was appropriate based on the nature of the offense.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accordance with what we might or might not have done had it been ours to determine, but to pass upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325, Third Division Award 16166.)

The Board finds substantial evidence in the record to uphold the Carrier's position in whole. We note that the Carrier proved that the Claimant failed to properly supervise the installation of a switch cable, track wiring, and a switch machine. His failure to properly supervise the installation of these devices was in violation of the Carrier's policy.

Based on the record, the Board concludes that the written reprimand is an appropriate penalty. The discipline assessed for the Claimant's negligence is commensurate with the degree of infraction. See Award 9 of Public Law Board No.

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5952. Therefore, the claim is without merit and the Board will not disturb the discipline imposed.

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 21st day of December 2004.