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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37870
Docket No. SG-38057
06-3-03-3-460

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Springfield Terminal.

Claim on behalf of W. J. Santini, for removal of excessive discipline of a 45-day suspension from service against the Claimant, account Carrier violated the current Signalmen's Agreement, particularly Article 19.1 when it failed to provide the Claimant with a fair and impartial hearing evident when it issued excessive discipline against the Claimant as a result of an investigation held on November 5, 2002. Carrier's File No. S-02-03. General Chairman's File No. WHK-232-012-1002. BRS File Case No. 12707-ST."

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.

On November 15, 2002 the Carrier issued the following letter of discipline:

“Reference to a recent investigation hearing conducted on your behalf on Tuesday, November 5, 2002 at 1000 hours in the training room at the East Deerfield, MA. mechanical facility.

The intent of this investigation hearing was to determine your responsibility, if any, for the alleged violation of N.O.R.A.C. Rule #138-C and C&S Policy Memo 3A.

As you are well aware, on Monday, October 7, 2002, your failure to comply with N.O.R.A.C. Rule #138-C and C&S Policy Memo 3A resulted in a crossing activation failure for train ED-2 at Elm St. Deerfield, MA. Mileage 28.39 on the Conn. River Main Line.

With regret, I must inform you that the Carrier was successful in sustaining the charge. As a result of your actions you have been assessed a forty-five (45) calendar day suspension, (this includes time served since being taken out of service on October 7, 2002), and a permanent restriction from holding a position above that of a Class 4 signalman. You must also complete a re-training in C&S Policy and Operating Rules upon your return to work.”

At the Investigation the Claimant admitted that he did not properly maintain the crossing protection at Elm Street in Deerfield, Massachusetts. Fortunately, a serious accident did not occur.

This was the second time in 17 months that the Claimant made the same error. When grade crossing protection does not work it puts not only fellow employees at risk, but the general public as well.

The Carrier met its burden in proving the Claimant violated its Rules. There is no basis for the Board to change the discipline assessed in this case.

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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 1st day of August 2006.