

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40261
Docket No. SG-40383
10-3-NRAB-00003-080190**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of M. E. Williams, for reinstatement to his former position with payment for all time lost with his seniority and benefits unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on August 16, 2006. Carrier’s File No. BRS(S)-SD-1092D. General Chairman’s File No. M. Williams-Dismissal. BRS File Case No. 13840-NRPC(S).”

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 had been employed by the Carrier for approximately ten years. On June 26, 2006, the Carrier directed the Claimant to attend a formal Investigation in connection with allegations that he had failed to report an injury and had provided a false statement in connection with an injury. Following the Investigation, the Carrier found the Claimant guilty of the charges and dismissed him.

On May 18, 2006, the Claimant, an Electronic Technician, was working as the Watchman for a Switch Maintainer. The two employees were headquartered at the Washington Terminal in Washington, D.C., and, at approximately 1:00 P.M., were called to Wye Bridge to work on a switch failure. Shortly after they arrived, the Claimant was removing his equipment from his truck when he was struck in the eye area by his Watchman's disc. The Signal Maintainer testified at the Investigation that he had his back turned and did not see the incident, but heard the Claimant cry out in pain, and when he turned, saw him holding his eye.

The Claimant sustained a serious cut to his nose and eye area. The Signal Maintainer testified that he was responsible for the Watchman, and the Claimant immediately reported the injury to him. The Signal Maintainer testified that he asked the Claimant if he needed medical attention, and the Claimant replied that he wanted to go to headquarters. The Signal Maintainer testified that the tower had called and trains were backed up, so he finished clearing the switch while the Claimant waited in the truck. The two employees then returned to headquarters where the Signal Maintainer informed the supervisor of the incident.

The Claimant was later transported to a hospital. He gave an account of the accident to a Carrier officer, who prepared a written statement, which the Claimant signed. The statement recounted that the Claimant had placed the Watchman disc on top of the truck's bins and as he shut the truck door, it caught the disc handle, causing it to spin off the bins and strike him in the face.

On June 6, 2006, two Carrier officers attempted to re-enact the circumstances of the accident. They had the Claimant park the truck in the location where he believed he had parked it on the day of the incident, and place the disc on top of the bins where it had been at that time. They closed the door numerous times to see if the disc would fling back with sufficient force to strike anyone, and it did not. The Carrier officers had no professional training in accident reconstruction, and no calculations were made concerning external factors such as wind.

On that same day, the Claimant provided a written account of the incident, in which he stated that he placed the disc on top of the bins, and as he was changing glasses, the door shut and hit the disc's handle, causing it to strike him in the face. The Carrier concluded that the Claimant had given inconsistent accounts of the incident and, from the attempted re-enactment, that the accident could not have occurred as he described it.

A Carrier officer saw the Claimant at about 12:30 P.M. that day, and observed no injury. Carrier records showed that the initial switch failure was reported at 1:08 P.M., the switch was cleared at 1:24 P.M., and the Signal Maintainer made that report to the tower at 1:38 P.M. Apparently, the Signal Maintainer made no mention of the injury at that time. The Signal Maintainer reported the incident to his supervisor at 2:19 P.M., when the two employees arrived back at headquarters. Because the Claimant and the Signal Maintainer stated that the Claimant was injured before the switch was cleared, the Carrier calculated that the Claimant failed to report the injury for at least 55 minutes.

We carefully reviewed the record in its entirety. First, we find no procedural irregularity which denied the Claimant his right to a full and fair Investigation. On the merits, the Carrier asserts that it has proven, by substantial evidence, that the Claimant provided dishonest and fraudulent information concerning his May 18, 2006 injury, and did not immediately report that injury to a supervisor. We find that the Carrier failed to meet its burden of proof concerning these allegations.

There is no dispute that the Claimant sustained a serious injury shortly after he and the Signal Maintainer arrived to repair the switch. Based on minor discrepancies between the Claimant's two accounts of the incident, and the Carrier's attempts to re-enact the incident, the Carrier concluded that the Claimant was dishonest. To prevail on such an allegation, the Carrier must demonstrate that the Claimant deliberately falsified the circumstances of the accident and had the intent to deceive the Carrier, not that he simply made a mistake.

The record in this case is insufficient to support that conclusion. The Carrier does not dispute that the Claimant was hit with the Watchman's disc. It has not come forth with any motive for the Claimant to lie about the circumstances of the incident, nor has it offered any alternate theory as to how it believes the accident occurred. The Carrier officers' inability to re-create the accident could be based upon numerous factors, including that the Claimant, who sustained a serious injury to his face, was mistaken concerning some specific aspect of the incident, especially since the attempted

re-enactment occurred three weeks after the accident. Absent more compelling evidence of deliberate misconduct, the Carrier has not sustained its burden of demonstrating that the Claimant falsified his account of the incident.

As for the allegation that the Claimant failed to timely report the accident, both the Claimant and the Signal Maintainer testified that the Claimant was responsible to the Signal Maintainer, and the Claimant immediately reported the accident to him. The Signal Maintainer made the decision to finish clearing the switch, and the Signal Maintainer reported the accident to the supervisor when they returned to headquarters. In all, less than one hour elapsed. The record does not establish that the Claimant was guilty of misconduct for failing to timely report the accident.

In view of the foregoing, the Claimant shall be reinstated with seniority unimpaired and paid for all time lost in accordance with the terms of the parties' Agreement.

AWARD

Claim sustained.

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 15th day of January 2010.