

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40307
Docket No. SG-40959
10-3-NRAB-00003-090262**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of C. W. Cross, for payment for all time lost, including overtime with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 68, when it issued the excessive discipline of a five-day Level 3 suspension 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 February 13, 2008. Carrier’s File No. 1494444. General Chairman’s File No. S-Investigation-919. BRS File Case No. 14160-UP.”

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.

According to the record of formal Investigation conducted on February 13, 2008, Claimant C. W. Cross, a 30-year Signal Technician, was assessed a five-day suspension for violation of FRA Instructions and Union Pacific's Signal Maintenance, Inspection, Test and Standard Instructions while working on signal trouble at control point H085. Specifically, the Claimant was charged with disarranging a redesigned signal circuit without proper authority and failing to perform required tests in violation of Rule 1.1 of the General Code of Operation Rules, Rule 56.1.2. of the Maintenance of Way and Signal Rules, and Rules 1.1.1 C, E, F and G, 1.2.1, 1.2.2, and 1.2.3 of the Signal Maintenance, Inspection, Test and Standard Instructions Rules.¹

¹ Those Rules provide in pertinent part:

Rule 1.1 "Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment."

Rule 56.1.2 "When signal apparatus is replaced or placed in service, perform tests according to Union Pacific FRA Inspection and Maintenance Instructions and standard signal drawings. Make tests and record tests on prescribed forms."

Rule 1.1.1

- "C:** Changes in these rules, instructions or supplements will not be made without approval from the Chief Engineer of Signals.
- E:** Employees must comply with government regulations applying to signal and interlocking systems. In the event of a conflict between the Governmental Regulations and instructions contained herein, the most stringent regulation, rule, or instruction will take precedence.
- F:** All signal apparatus that affects train operation or public safety must be tested when installed, modified, or disarranged and at least once every designated time frame thereafter.
- G:** Signal employees must not perform any work that may compromise the integrity of the signal system permitting unsafe public or train movements.

According to the record, on December 28, 2007, the Claimant was assigned to work on the Palestine Subdivision, at Milepost 84.3, Control Point HO85 in Palestine, Texas. K. Alston, Manager of Signal Maintenance at the point, and the Claimant's supervisor, testified that a "control point is a controlled absolute signal. The [off-site] dispatcher controls the signals. Trains have to stop if they do not have a proceed signal there." Between control points there are intermediate signals controlled by electronic track circuits ("electro code 2" boxes) which determine the condition of the track and convey aspect information or what signal the trains should be able to see at that location. Alston testified that the "electro code 2" boxes, which communicate with each other along the tracks, are vital to the integrity of the signal system.

On January 5, 2008, Alston received a telephone call from Signal Operations that a train crew had reported receiving a flashing yellow signal where they believed they should have had green. Alston testified that as the train in question was approaching HO85 it had been running on clear or green signals, but when it

This includes, but is not limited to causing: improper proceed signals, activation failures of crossing warning devices, and defeating signal locking circuits."

Rule 1.2.1

"A: No circuit modifications may be made without authority from a Manager of Signal Design.

D: When any wiring or rewiring is completed, the employee in charge must perform a ground test and ensure that the proper operating tests are performed to determine that the system is functioning properly before returning the system to service."

Rule 1.2.2 "Circuits Disarrangement for Any Reason: The designated signal employee in charge will test the circuits or components disarranged in accordance with test instructions before returning the system to service, and complete the proper form(s) for applicable tests."

Rule 1.2.3 "Operational Tests: Operational tests of a signal system must be performed by making visual observations of all signals involved to verify that the proper aspects are displayed."

approached 87 it was flashing yellow indicating that a signal up ahead was red. After reducing speed, due to the grade in the area it lost momentum and stalled and, thereafter, was required to wait on locomotive power to arrive and help push it uphill and into Palestine.

Alston investigated and upon testing the system “discovered that the wire at H085 on the terminal TB-3 on the south Electro code box, wire 4 had been moved to . . . TB-3, code 3 terminal.” Alston testified that he viewed this situation as a disarrangement and redesign of signal circuits. He further testified that there is a process for acquiring authority to make such changes (i.e., the Director of Signal Design has authority to make changes) and when a disarrangement occurs, certain tests are required.

Alston’s investigation revealed, and the Claimant does not dispute, that while performing his duties on December 28 he disarranged and redesigned the above signal circuits within an electro code 2 box at H085 that communicated with another electro code 2 box at approximately milepost 87.2. Alston testified that the Claimant did not have the authority to make such disarrangements or redesign the aspect of the signal system. By moving the wire, the Claimant affected traffic going in one direction. In short, it took the signal from being clear and a green to a clear and a flashing yellow.²

² G. Walker, Signal Maintainer, Palestine, Texas, testified that he was working with the Claimant on the day in question although he was not present when the wires were moved. He testified that he had been told many times to never remove wires, indicating that he considers the electro code boxes to be a vital part of the signal system and would consider it to be somewhat risky to move wires.

J. Hamilton, Signal Maintainer, Trinity, Texas, also testified that he considered the electro code 2 boxes to be extremely vital to the signal system. On cross-examination, Hamilton testified that he has never made the type of change made by the Claimant. He noted that he would not have the authority to do that on his own motion, but would be required to call the Signal Manager. He also stated that he would consider moving the wire from terminal 4 to terminal 3 as the Claimant did to be a “disarrangement” under the Rules that requires proper testing of the signal system. He agreed that if a disarrangement takes place such as the one at issue which affects the aspect information, the Carrier’s Rules as well as federal regulations require testing to observe colors.

Alston also testified that the Claimant did not perform all necessary tests. Specifically, the Claimant did not observe the aspects of the adjacent signal at milepost 87.2. Alston explained on cross examination that one would not be able to tell whether moving one wire at this particular location would actually affect the other location unless the adjacent signal was tested. In this case, moving the one wire did affect the adjacent signal – it downgraded the signal at 87 from green to flashing yellow. Alston testified that the visual observation required by Rule 1.2.3 means that one must physically view the signal color. On cross-examination, he further testified that you have to test the signal aspects affected:

“Q: How was 87.2 affected by a change at 85?

A: The change at 85 changes what the aspect the information being sent to 87 is. . . . The code being sent out at 85 was changed from a code – from what the code was supposed to have been at that time to a different code. Without testing everything you don’t know what that code is doing at that moment.”

Although the Claimant admitted during the course of the Investigation that he did not test the signal at 87.2, he maintained that it was not necessary to do so, because it was wired correctly and had been tested prior to the disarrangement. Because he did not affect any changes at 87.2 he did not believe that it would be any different after the change than it was before the disarrangement. However, he conceded that he could not know this for sure without visually observing the signal at 87.2:

“Q: How do you know an employee prior to you didn’t do a disarrangement in 87.2 when it was transmitting a 3 or a 4 and it displayed an aspect other than what you thought it displayed?

A: I don’t know.

Q: You don’t. Well how can you determine that?

A: You go and look at that aspect. But under the yellow book when you made a disarrangement you test the circuit that you

affect. You don't go down the block and test everything in the whole block.

Q: I'm going to read you here what it states . . . in Rule 1.2.3, Operational Tests. And it's very specific in here about disarrangement and operational tests. 'Operational tests of the signal system must be performed by making visual observations of all the signals involved to verify that the proper aspects are displayed. . .' Did you change the circuits at H085 that affects the signal aspects at 87.2?

A: I downgraded the code rate.

Q: Did you make any changes at H085 that affects the aspects of the signal at 87.2?

A: Yes.

Q: Did you observe the signal aspects at 87.2 after you made that disarrangement?

A: No."

Walker confirmed that no observational test was made at 87.2.

The Board considered but is not persuaded by the Organization's argument that the Claimant's supervisor knew about the changes the Claimant made and neither took any exception to them nor gave any input on any specific test that needed to be performed after the change was made. The evidence shows that Alston, who was on vacation on December 28, called into the office to check on another problem in a different area and during the course of that conversation, the Claimant mentioned that he had moved the wire from the code four to code three so 87.2 would get a flashing yellow. However, the Claimant conceded that he did not obtain Alston's permission to do the disarrangement beforehand and he made no reference during the course of the conversation as to whether he had or had not performed an operational test of the system by observing the aspects of 87.2. This alleged "after the fact" conversation does not absolve the Claimant of his responsibilities to comply with the Rules before and after the disarrangement was made.

In sum, there is no dispute that the Claimant disarranged a redesigned signal circuit without proper authority and failed to perform the required observations

test, creating a disruption in service. In light of the clear violations and the substantial evidence of the vital role played by the electro code 2 boxes in question to the smooth and safe operations of train movement, we conclude that the discipline imposed was warranted.

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 March 2010.