

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40483
Docket No. SG-40126
10-3-NRAB-00003-070352
(07-3-352)

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

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(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 T. S. Omaye, for compensation for all time lost, including overtime, with all seniority and benefits restored and 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 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 June 8, 2006. Carrier compounded these violations by failing to provide proper notice and then failing to render a decision within the time limit provisions of Rule 68. Carrier’s File No. 1449868D. General Chairman’s File No. N 68 622. BRS File Case No. 13735-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.

The Claimant was investigated and found guilty for his actions of May 9, 2006. The Carrier determined from a review of the testimony that the Claimant violated Rule 8.1.15 "Highway Grade Crossing Warning System Disabling" by disabling the crossing protection without taking the mandated protective measures. Additionally, when confronted by a Carrier Officer at the disabled crossing, the Claimant utilized profanity as he denied that he had disabled the crossing protection. For dishonesty, discourtesy, and a serious safety violation, the Claimant was dismissed from service.

The Organization raised several procedural violations. The Board reviewed them carefully and finds no support in the record with regard to notice requirements, vagueness, timeliness, or a failure to provide a fair and impartial Investigation.

The Board studied the testimony to determine if there was proof to support the charges. The burden rests with the Carrier to prove the Claimant's guilt, which the Organization maintains it failed to do. The Board notes the testimony of Gillen who indicated that the Claimant scored perfect on disabling crossing protection and that there should have been no reason to expect any improper action. The testimony of McCarty is clear that he was ordered by Williams to determine why "the gates were jumpered up." McCarty testified that his further investigation determined that an orange jumper tagged with the Claimant's name was disabling the crossing protection. McCarty testified clearly that the Claimant "said he didn't know if there was an order on the crossing" and when asked if he filled out a disabling sheet, the Claimant said, "No."

The Board notes that Manager of Signal Projects Grabek thereafter went to the Oakton Street crossing to ascertain what was going on, because the crossing protection had been disabled without following the proper Rules. Grabek testified that he approached the Claimant and asked him if the orange jumper that the Claimant admitted was his, had been used to "jumper up" the crossing. Grabek testified that the Claimant answered no, not once, but around four times. Finally,

Grabek testified, "I said, Stoney, I just want you to remember this conversation and that you had repeatedly lied to me about jumpering out the crossing." At that time, Grabek testified that the Claimant became angry and responded using profanity.

A full review of the testimony is persuasive that the Carrier met its burden of proof. Although the Claimant denies the conduct, the Board finds no reason to question the credibility decision of the Hearing Officer. Given that the Board finds no procedural error and substantial evidence of guilt, the only issue remaining is the quantum of discipline.

The behavior engaged in by the Claimant is extremely serious and his actions inexcusable in both safety and conduct. However, the Board notes that the Claimant has 27 years of good service. The testimony of Supervisor Gillen is that he would never have expected this type of behavior from the Claimant. After careful consideration, the Board believes that the discipline has served its function of punishment, improvement, and guidance. The Board will permit the Claimant to return to service with seniority rights restored, but without pay for time lost. Clearly this behavior should never be repeated.

AWARD

Claim sustained in accordance with the Findings.

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 14th day of May 2010.