

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 40530  
Docket No. SG-40187  
10-3-NRAB-00003-070089  
(07-3-89)

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 R. D. Wuthrich, for compensation for all lost time, including overtime and to be made whole for any other losses he may have incurred, with any reference to 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 30-day Level 4 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 March 2, 2006. Carrier’s File No. 1441569. General Chairman’s File No. UPGCW-68-1211. BRS File Case No. 13709-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 directed to report for an Investigation to develop the facts around an alleged failure “. . . to properly protect malfunctioning crossing protection and allegedly failed to properly test crossing after repairs were made” in violation of Rules 8.1.4C, 8.1.12b in Signal Test Instructions and Rules 56.1.2 (Testing for Quality) and 56.1.3 (Compromising Signal System Safety) in the Maintenance of Way and Signal Rules. On March 15, 2006, after review of the Investigation testimony, the Carrier found that the Claimant was guilty and assessed Level 4 discipline (30-day suspension).

The Organization argued that the Carrier’s Notice of Discipline lacked specifics with which to appeal, maintaining that the Carrier did so due to a lack of proof. What the Organization argues is that an identical false proceed programming error had occurred and the Claimant was ‘set up’ to fail without proper knowledge of the incident and with a new piece of equipment for which he lacked training. The Claimant was familiar with the GCP (Grade Crossing Predictor) 3000, but was provided a new technology for which he had to call a factory representative for aid in programming the GCP 4000. The Organization argues that the Claimant had requested training, been invited to work on the new equipment with another Electronic Technician, but was never permitted to obtain the necessary experience. The Organization maintains that the Carrier found the Claimant guilty, “as a result of his lack of testing” for which this was one of three events that occurred and the only one for which discipline was assessed - a failure of equitable treatment required by the Agreement.

The Board studied the transcript and the issues that have been raised. The substance of this instant case is compliance with the Rules. The Claimant was found guilty of failing “to properly test and provide alternate protection” while performing his work. The Board studied the Claimant’s testimony, which relates mostly to the new equipment. The Board also studied the testimony of Manager of Signal Projects Dillenburg, who testified that “there was never a track and time or a

**Form C to provide for alternate protection.” This is a clear violation of Rule 8.1.4C which states in pertinent part:**

**“Alternate Warning: When automatic highway crossing warning fails to operate properly or is damaged alternate means of warning highway users must be provided promptly and maintained until necessary repairs are made – FRA Standard 234.105 and 234.107.”**

**The Board notes that there was no protection, no XH Order and no Flagman utilized as required by the Rules.**

**Additionally, the testimony of Dillenburg is clear with regard to a proper test, as required by Rule 8.1.12B which states that:**

**“When possible verify the proper warning time of the crossing system by observing a train or engine approach the crossing at a constant speed.”**

Dillenburg states throughout his testimony that the Claimant did not properly test the crossing and the Board’s review of the Claimant’s testimony does not find a contradiction. Dillenburg states that the Claimant “did not describe to me how he tested T-2 on the siding” and after review of the CAD Log, determined that there was “no evidence that T-2 was tested at all.” It is clear from the Claimant’s testimony that he observed only one train move in a westbound direction. Therefore, he never completely tested the main track, or T-1 eastbound, and did not test T-2 at any time.

The Carrier provided sufficient probative evidence to prove a serious Rules violation. None of the Claimant’s failures were proven to be due to the use of new technology. The Carrier provided proof that they were due to the Claimant’s deficient, improper and dangerous failure to comply with Rules. The Board finds the discipline appropriate and denies the claim.

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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 15th day of June 2010.**