

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40534
Docket No. SG-40435
10-3-NRAB-00003-080255**

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 S. E. Randle, for payment for all time lost, including overtime, and any benefits lost with his record cleared, account Carrier violated the current Signalmen’s Agreement, particularly Rule 68, when it issued the harsh and excessive discipline of a Level 4, 30-day suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proof in connection with an investigation held on February 6, 2007. Carrier’s File No. 1466573. General Chairman’s File No. UPGCW-68-1417. BRS File Case No. 13903-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 instant case is a companion to Third Division Award 45035. By Notice dated January 24, 2007, Claimant S. E. Randle was directed to report for an Investigation to be held on February 6, 2007. On that date, consideration and testimony was given to the following charges:

“While employed as Asst. Signalman, on Gang #7740, at Sloan, Nevada, near Milepost 315, at approximately 1300 hours, on January 12, 2007, you allegedly failed to observe equipment clearance and raised the boom on your truck coming in contact with a 3800 high voltage line jeopardizing the lives of yourself and fellow employees.”

Subsequently, the Carrier reviewed the transcript and developed facts, determining that guilt had been proven. The Carrier assessed Level 4 discipline (30-day suspension).

It is the position of the Organization that the Carrier not only failed to prove its case, but also did not consider the facts. In assessing the discipline, Director of Signal Construction Martin never explained how he reached his decision. In fact, the decision is not based on the relevant testimony. The Claimant had less than six months of service, worked under the supervision of a Signalman, was given no training, had no instruction as to the operation of cranes, and cannot be held accountable. The Organization further notes that after this incident he was given instruction on the operation of the boom, the Claimant was told to watch the load, because the ground man would watch the boom so that it did not hit the power lines. The Carrier was wrong to assess discipline under the conditions of this claim.

The burden of proof rests with the Carrier which found the Claimant guilty of violating Operating Rule 78.7. That Rule states:

“Do not operate booms over power lines at any time. Do not operate them under power lines unless proper clearance is maintained. If proper clearance cannot be maintained, shut off the power and ground power lines before performing work.”

The Investigation testimony stands clear of ambiguity. The Claimant was asked if he had received a “signal to boom up?” and answered “No.” The Claimant was asked, “Had someone told you to boom up?” and he answered “No.” The Claimant was asked if during the briefing he had been told about power lines and “to stay clear of them” and he answered in an affirmative manner to both questions. The Claimant also indicated that he had operated the boom truck some five or ten times, was comfortable with it and in fact, hit the power lines. There is no uncertainty in this record as to violation of the above stated Rule. The Carrier has the evidence throughout the full testimony to prove guilt.

With respect to the full record, the Claimant was aware of the danger and proceeded to lift the boom into the power lines. The Board considered the Organization’s arguments about training, supervision and the failure of the Carrier to properly prepare the Claimant for the task of handling the boom truck. The Board is not persuaded that a failure of this magnitude, of moving the boom into high voltage power lines, is somehow a training issue to prevent the Claimant from making this error. The Claimant’s Supervisor that date (Silva) testified that the Claimant was doing a good job at running the boom, had been informed of the power lines and answered affirmatively that he was satisfied the Claimant knew what he was doing. The evidence does not suggest that this failure was related to training issues. The Board finds the Carrier’s arguments that it was a failure to be fully attentive and prudent to be justified.

Accordingly, the Carrier’s burden of proof has been met. Given the seriousness of the issue, the discipline cannot be considered harsh. Level 4 discipline for moving a boom into high voltage power lines that could have had lethal consequences for the Claimant and the gang is not found to be excessive. The Carrier’s actions will remain undisturbed. The claim must be denied.

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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.