

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40573
Docket No. SG-40545
10-3-NRAB-00003-080400**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of D. A. Christian, for the discipline issued to be rescinded with any mention of this matter removed from his personal record and made whole for any losses incurred, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it issued the excessive discipline of a three work day deferred 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 April 27, 2007. Carrier's File No. 11-27-619. General Chairman's File No. 5-D-07. BRS File Case No. 13996-NIRC. NMB Code No. 119.”

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.

On April 12, 2007, the Carrier directed the Claimant to report for a formal Investigation on April 18, which was subsequently postponed until April 27, 2007, concerning the following charge:

“ . . . The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, with your alleged failure to protect the movement of train 2114 on April 11, 2007 when you interfered with the operation of the crossing protection at Shermer Avenue, Northbrook, Illinois resulting [in] train 2114 allegedly receiving a false clear signal when he received an unfavorable aspect of a green signal at MP 23.4 into a red signal at MP 22.2.

In connection therewith you are charged with alleged violation of the following rules: Signal Maintenance, Inspection and Test Instructions, General Instructions 1.2-H and 1.4 and Safety Rules and General Procedures Rule 1.20.

Your personal work record will be reviewed at this investigation.”

On May 7, 2007, the Claimant was notified that he had been found guilty as charged and the Carrier assessed a three workdays deferred suspension that was placed on his personal record.

It is the position of the Organization that the Claimant was denied a fair and impartial Investigation and there was no evidence or testimony to indicate that the Claimant was guilty. It argued that the record established that the Claimant is a conscientious employee who tried to complete a job under difficult weather conditions and that the only occurrence that happened in this instant case is that a train crew received a downgraded signal, which under the circumstances of the weather conditions, would have created a safer condition for the public that was

traveling near the crossing. It concluded by requesting that the discipline be set aside and the claim be sustained as presented.

It is the Carrier's position that the Hearing was held in a fair and impartial manner and substantial evidence was adduced to support the Rule violations with which the Claimant was charged. It further argued that the degree of discipline was appropriate considering the severity of the Rule violations and it asked that the discipline not be disturbed.

After thoroughly reviewing the transcript and record evidence, the Board has determined that no procedural errors occurred during the handling of this dispute and the Claimant was not denied his Agreement due process rights.

Having determined that Claimant's Investigation was held in a fair and impartial manner, the Board turns its attention to the merits. The facts indicate that during the early morning hours of April 11, 2007, a severe snowstorm was taking place on the Milwaukee North Operating District. The Claimant was called to perform snow duty on his assigned territory. At approximately 7:00 A.M., he arrived at the Shermer Road Crossing to remove snow from the crossing gates and lights.

The record verifies that in order to clean the gates, it was necessary to activate and move them down into position to block highway vehicle travel. A test switch is available on the grade crossing control unit that detects oncoming trains; if switched, it causes the gate to lower. As a "fail safe" protection, if the grade crossing control unit is shut off, the gates are automatically lowered to protect vehicular traffic at the grade crossing.

Turning off the control unit used at the subject crossing also alters the aspect of Signal 22.2 (Dundee) to display its most restrictive indication, i.e., stop. Shermer Road Crossing is located in Centralized Traffic Control (CTC) territory and before an employee takes any action that alters a signal aspect in CTC territory, the employee must secure authority to do so.

On April 11, the Claimant did not use the test switch to lower the crossing gates. Instead, he elected to shut off the crossing, which caused Signal 22.2 to turn red in front of Train 2114. No authority with control over the CTC territory, such as a Dispatcher, granted the Claimant authorization to do what he did. Therefore,

the record is clear that the Carrier proved that the Claimant changed a signal aspect without proper authority. However, it did not prove that his actions resulted “in train 2114 receiving a false clear signal,” because it was just the opposite that occurred, i.e., the train was required to stop.

The only issue remaining is whether the discipline assessed was proper. At the time of the incident, the Claimant had more than 14 years of seniority with no discipline on his personal record since April 1999. Therefore, the Board finds and holds that the discipline was excessive and, because of that, it will be reduced to a Letter of Reprimand. The Board also offers the Claimant a forewarning - that in the future he must be more careful to adhere to Carrier instructions and/or directives.

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 29th day of June 2010.