

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40579
Docket No. SG-40956
10-3-NRAB-00003-080537**

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 O. Ducksworth, L. Dumas, E. E. Gonzales and B. J. Pierre, for payment for all time lost and the Claimants to be made whole with all discipline issued to be rescinded and any mention of this matter removed from their personal records, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it issued harsh and excessive discipline against the Claimants without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation that started on May 24, 2007 and concluded on May 30, 2007. Carrier compounded this violation by failing to respond to the Organization's appeal within the time limit provisions of Rule 53. Carrier's File No. 11-27-621. General Chairman's File No. 7-D-07. BRS File Case No. 14017-NIRC.”

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 May 19 the Carrier notified the Claimants to appear for a formal Investigation on May 23 that was mutually postponed and held on May 24, 2007, concerning, in pertinent part, the following charge:

“. . . The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, when you allegedly allowed signal boom truck 90907 to be struck by Metra train No. 510 on Saturday, May 19, 2007 at approximately 11:45 A.M. This incident occurred on the Rock Island District at 39th Street. Therefore, you are charged with alleged violation of Metra Safety Rules and General Procedures Manual as follows:

142.2.1 Employees and Contractors - A2, A4, A5, A6, A7, B1, B3

142.2.2 Employee in Charge B1a, B1d

142.2.3 Employee Responsible for On-Track Protection –
B1a, b, c, d, e

142.3 Failure to Conduct Proper Job Briefing

142.3.1 Initial Job Briefing Dot Points 6, 7, 10

142.3.2 Follow Up Job Briefing

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

On June 8, 2007, the Claimants were notified that they had been found guilty and the Carrier issued discipline to all. The discipline deviated from the Carrier's Progressive Discipline Policy for each Claimant. Claimants Ducksworth and Dumas each received a 30-day suspension, and Claimants Gonzales and Pierre both received a 15-day suspension. The Notices of Discipline also restricted Claimants Ducksworth and Pierre to the position of Signalman and prohibited them from acting as Employee In Charge (EIC) or the employee responsible for on-track safety for two years. Claimant Ducksworth was assessed Level 3 discipline, Claimants

Dumas and Gonzales were assessed Level 2 discipline and Claimant Pierre was assessed Level 4 discipline.

It is the position of the Organization that the Investigation was procedurally flawed in a variety of manners, which denied the Claimants a fair and impartial Investigation and, on that basis alone, the claim should be sustained. On the merits it argued that the record supports the fact that the Claimants were not guilty as charged and the discipline exercised against them was contrary to the Carrier's Progressive Discipline Policy and excessive in nature. It concluded by requesting that the discipline be set aside and the claim sustained as presented.

It is the Carrier's position that the Hearing was held in a fair and impartial manner and the record substantiates that on the date in question all Claimants were negligent in allowing Signal Boom Truck 90907 to be struck by Train No. 510. It concluded by asking that the discipline not be disturbed.

The Board thoroughly reviewed the transcript and record evidence and has determined that the alleged procedural errors did not rise to a level which would require resolution of the case without reviewing the merits.

The facts of the case indicate that on May 19, 2007, the Claimants were members of a Signal Gang that was assigned to place signal sheds on their foundations using an on-track crane or boom truck. The work took place on the Rock Island territory at the 39th Street Crossing. Claimant Pierre was the EIC of On-Track Safety, Claimant Ducksworth was Lead Signalman, Claimant Dumas was a Signalman and Claimant Gonzales was working as the Truck Operator.

At approximately 11:45 A.M., Claimant Pierre allowed Train No. 510 into the work limits of the Form "B" Track Warrant that protected the crew's safety after she spoke to Claimant Dumas by radio and he advised Pierre that all employees and equipment were in the clear. Subsequently, Train No. 510 hit the extended outrigger of the boom truck as it attempted to pass through the work area.

Testimony substantiated that Claimant Pierre was not at the site of the accident, but was at the Root Street Interlocking to set a signal shed at that location with another crew. When Train No. 510 requested permission to proceed forward, it called Claimant Pierre. Before she granted that permission, she called Claimant Dumas whom she left in charge at 39th Street to advise him to make sure the

employees and equipment were in the clear. Dumas told Pierre that everyone and all equipment were in the clear, after which Pierre granted the train crew permission to enter the work area. The record is clear that Claimant Pierre was not responsible for the accident, because she fulfilled her duties in accordance with her assignment and the Carrier did not meet its burden to prove that she was guilty as charged.

The record established that on the day in question, Foreman Alvarez was absent, and assigned Claimant Ducksworth to be in charge of his gang. Prior to the train arriving at 39th Street, Claimant Ducksworth was directing and physically assisting other employees on his gang with the process of setting the signal shed, which was the work he was directed to accomplish. Testimony of several witness further verified that Claimant Ducksworth was not the EIC of the on-track protection at 39th Street. Therefore, it is apparent that the Carrier did not prove that Claimant Ducksworth was guilty as charged.

Testimony further indicated that on May 19 Claimant Gonzales was the Truck Operator. He was questioned as follows:

“Q. Did Mr. Dumas ask if the truck was in the clear before he talked to Miss Pierre?

A. No.

Q. Did Mr. Dumas tell you or the crew to get in the clear?

A. I didn't hear him.

Q. When did you find out that Mr. Dumas told Miss Pierre that you were in the clear?

A. When he said hot rail.

Q. And where was the train then?

A. I saw the lights. It was right there. It was, I don't know, maybe 80, hundred feet from the truck. Maybe 80 or a hundred feet. I don't know. It was close. I don't know, I don't know.

Q. Do you feel you were given enough time to get in the clear?

A. I don't understand your question, sir.

Q. Should he have told you to get in the clear before talking to Miss Pierre?

A. Yes.

Q. Did he do that?
A. No.”

The testimony of Claimant Gonzales, wherein he said that he did not hear Dumas's instruction to get the machine in the clear in a timely fashion, was not refuted. In fact, Claimant Dumas subsequently confirmed that Gonzales never verbally acknowledged he was in the clear, but that when he looked at Gonzales, it appeared from his expression that he was in the clear. Dumas testified “. . . he looked at me like yeah, I'm in the clear.” The Carrier did not meet its burden to prove that Claimant Gonzales failed to move the boom truck in the clear prior to Train No. 510 entering their work area, because it is apparent that he was not given a proper directive to do so in a timely fashion.

The testimony of several witnesses further confirmed that Claimant Dumas was assigned the responsibility by Pierre, during one of many job briefings she held that day to be the EIC responsible for seeing that all employees and machinery were in the clear before releasing any trains. Claimant Dumas failed in that responsibility when he did not verbally confirm with Gonzales that the boom truck was in the clear before Train No. 510 entered their work area. The Carrier met its burden to prove that Claimant Dumas was guilty.

The Board finds and holds that the personal records of Claimants Pierre, Ducksworth and Gonzales should be cleared of the charges and each of those Claimants made whole for any monetary loss suffered. The Board further finds and holds that the discipline of Claimant Dumas will not be disturbed. All Claimants are forewarned that in the future they should exercise caution in their communications on the job so as to insure that everyone has an understanding of their responsibilities.

AWARD

Claim sustained in accordance with the Findings.

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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 27th day of August 2010.