

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40831
Docket No. SG-40664
11-3-NRAB-00003-080567**

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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Claim on behalf of D. P. Romaniszak, for payment for all time lost with the discipline rescinded and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it imposed the excessive discipline of a six-day suspension against the Claimant, that resulted in seven days of lost pay, without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on July 6, 2007. Carrier's File No. 11-7-625. General Chairman's File No. 9-0-07. BRS File Case No. 14021-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 February 15, 2007, the Claimant was assigned to the Roselle Signal Maintainer's territory on the Carrier's Milwaukee West Operating District as a Signal Maintainer. His rate of pay, hours of service and working conditions were governed by the General Rules Agreement between the Northeast Illinois Regional Commuter Railroad Corporation (NIRC) and the Brotherhood of Railroad Signalmen (BRS) effective March 1, 1984, as amended.

The switches and signals for the Roselle Interlocking are remotely controlled by a Tower Operator in Tower B-17, several miles east and not within sight of the Roselle Control Point. On the morning of February 15, 2007, there was a snowstorm with substantial blowing snow on the Claimant's maintenance territory. The Claimant began work performing snow duty early that morning. Several hours into his shift, but before dawn, the Claimant was injured while sweeping snow out of the track switches within the limits of the Roselle Control Point. The Claimant called his Supervisor to report the injury. When asked by his Supervisor what kind of roadway worker or other protection he was using while working within the limits of the Roselle Interlocking at the time of the injury, the Claimant stated that he was using Individual Train Detection (ITD). However, the use of ITD within a Control Point is prohibited by Safety Rule 142.9.2.1 No. 1&2.

By letter dated February 16, 2007, the Claimant was notified to attend an Investigation:

“... to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged failure to use Individual Train Detection properly while cleaning snow from switch rods at the Roselle Interlocking and failure to hold a job briefing at the beginning of your tour of duty at the Roselle Interlocking on February 15, 2007.”

The letter charged the Claimant with violating Safety Rule No. 142.9.2.1 No. 1 & 2. A Hearing was held on July 6, 2007. By letter dated July 16, 2007, the Claimant

was notified that he had been found to have committed the offenses with which he was charged and to have violated the cited Rule. He was assessed a six day actual suspension, including one day previously deferred from November 2006.

The Carrier asserts that the Claimant was afforded a fair and impartial Hearing and that there is substantial evidence to support its determination and the discipline assessed. The Organization raises a number of procedural and substantive objections.

The Board considered the Organization's procedural objections, but finds that the Claimant's procedural Agreement due process rights and his right to a fair and impartial Investigation were not impaired. The charge letter was sufficiently detailed so as to inform the Claimant of the offenses with which he was charged and enabled him to present a defense. It is true that it was the Claimant's report of his on-duty injury on February 15, 2007, that brought his alleged offenses to the Carrier's attention. However, that does not mean that the subsequent discipline was imposed on the Claimant in retaliation for sustaining the injury. The Organization failed to prove that the discipline was retaliatory in any way.

The Organization objects that the Carrier failed to sustain its burden to prove that the Claimant committed the offenses with which he was charged. Safety Rule No. 142.9.2.1, No. 1 & 2 - Individual Train Detection (ITD) specifically states that a lone worker cannot use ITD within the limits of an interlocking or a control point:

"A lone worker can use individual train detection to watch for trains. ITD can be used for protection only when a person is performing routine inspection or making minor repairs.

If you are a lone worker using ITD, follow these requirements:

- 1. ITD cannot be used within interlocking limits or control points.**
- 2. Conduct a job briefing (see Rule 142.3.1) with the designated employee at the beginning of your tour of duty. The designated employee could be a coworker, train dispatcher, control operator, supervisor or other qualified employee. This briefing**

must include: Planned Itinerary, On-track protection procedure to be used, Identification of a place of safety where you go when necessary to clear the track, Location of work, Approximate length of time to be spent at each location.”

The record contains substantial evidence that the Claimant used ITD within the limits of the Roselle Interlocking. He admitted as much. The Organization asserts that this was not a violation of Safety Rule 142.9.2.1 No. 1 (“ITD cannot be used within interlocking limits or control points”) because the Claimant had placed the Interlocking in local control at the time and, therefore, had a second form of track protection at the time. However, the record reflects that the Claimant never contacted the B-17 Tower Operator to obtain authority to take local control. This was sufficient to support the Carrier’s determination that the Claimant either did not have Local Control, or that he took local control without proper authority. In either case, he was using ITD improperly in violation of Safety Rule 142.9.2.1 No. 1; improper use of local control does not excuse the Claimant’s violation of the ITD Rule. Similarly, there is substantial evidence that the Claimant failed to conduct a job briefing at the beginning of his tour of duty as required by Safety Rule 142.9.2.1 No. 2.

Finally, the Organization objects that the Claimant was denied seven days’ pay although the Carrier purported to suspend the Claimant for only six days. However, the penalty was calculated correctly. The Claimant holds a monthly rated position. To determine a monthly-rated employee’s daily rate, the Carrier counts the actual days the employee is scheduled to work his/her assignment in a month, adding in the “sixth day” (paid not worked day) and divides the monthly rate by this number of days. The daily rate for the days of the Claimant’s six-day suspension was calculated in this fashion. He lost the corresponding compensation for each of those six days and no more.

AWARD

Claim denied.

**Form 1
Page 5**

**Award No. 40831
Docket No. CL-40664
11-3-NRAB-00003-080567**

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 11th day of January 2011.