

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40913
Docket No. SG-41209
11-3-NRAB-00003-100044**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Illinois Central Railroad

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of G. L. Smith, for payment for any time lost with the discipline rescinded and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 35, when it imposed the excessive discipline of a 10-day deferred suspension from service for a period of one year 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 October 15, 2008. Carrier’s File No. IC-BRS-2008-00005. General Chairman’s File No. IC-013-08. BRS File Case No. 14265-IC.”

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 disciplined in connection with an injury to his left little finger tip. At the time of his injury, the Claimant had more than 30 years of service. His work record was free of prior discipline.

According to the record, the Claimant was removing a shim from one of the points at the CTS2 switch machine at the Montgomery control point in Brookhaven, Mississippi. For reasons not adequately explained in the record, the Claimant lost the tip of his finger and suffered a fracture of the bone in the remaining stump of the tip.

As indicated by the previous sentence, our review of the record finds it to be flawed in certain respects. First, the incident involved a lengthy discussion about the apparatus associated with the switch machine. Unfortunately, the Conducting Officer did not establish a coherent set of terms to define the nomenclature of the components that were discussed and then use those defined terms consistently. For example, at various times throughout the transcript, the Conducting Officer referred to the same piece of equipment in four different, yet interchangeable, ways: Point clamp, point block, point lock, and point lug. This usage makes the transcript very difficult to analyze. Moreover, the testimony of a Carrier witness on Page 64 of the transcript, at lines 1-15, describes the point lug to be something other than the point clamp. As described by that testimony, the point lug is part of the apparatus located between the rails that shifts the two switch points back and forth as the switch machine is thrown between its two switch conditions. According to that testimony, the shim fits between the point and the point lug, which means the point lug cannot be synonymous with a point clamp.

Second, the testimony cited in the previous paragraph described a separate theory of the cause of the injury that differs from the causal conclusions that essentially blamed the Claimant for failing to properly apply a point clamp before attempting to remove the shim.

Third, the separate theory, not involving the point clamp slippage, was not fully investigated during the re-enactment conducted by Carrier Officials shortly after the injury. The record does not show that the amount of closure was ever measured when the clutch of the switch machine was stressed to the point where it slipped. The transcript, therefore, makes it appear that the Carrier Officials quickly seized on the other causative theory for which the Claimant could be blamed.

Finally, the Conducting Officer made a fatal error when he refused to allow the Organization to establish that the Claimant's culpability was prejudged. At page 73 of the transcript, the Organization sought to delve into a pre-investigation conversation that suggested that the Claimant would be assessed with a suspension without pay if he refused to accept a 15-day deferred suspension. The Conducting Officer refused to allow the Organization to pursue this line of questioning.

Although conducting officers are usually on safe ground when they restrict the scope of an investigation to the narrow incident in question, there are several instances when the conducting officer must allow an expansion of the scope of the testimony. Absent truly extraordinary circumstances, it is always relevant and proper for the Organization to attempt to establish an affirmative defense, or to challenge the credibility of a witness by establishing bias, prejudice, or a motive to distort testimony, and to attempt to establish that the Claimant was a victim of prejudgment before a fair and impartial investigation is conducted. The refusal to allow the Organization and the Claimant to pursue these kinds of matters effectively amounts to a denial of a fair and impartial investigation. In this dispute, the Conducting Officer denied the Claimant a fair and impartial Investigation when he refused to allow the Organization to pursue the prejudgment allegation.

For the foregoing reasons, the claim must be sustained as presented.

AWARD

Claim sustained.

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 10th day of March 2011.