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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40955
Docket No. SG-41259
11-3-NRAB-00003-100100**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link, Inc.:

Claim on behalf of R. D. Schiele, for reinstatement to service with compensation for all time lost and his seniority and employment benefits unimpaired and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Article 13 (Discipline), when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial hearing and without meeting its burden of proving the charges in connection with a fact finding session held on March 12, 2009. General Chairman’s File No. 09-020-MRL-87. BRS File Case No. 14315-MRL.”

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 dismissed for failing to properly maintain the backup batteries at a grade crossing and falsifying the maintenance log for the location. The Claimant's prior work record contained three prior disciplinary entries, one of which was for similar misconduct some five months prior to the incident in question.

It is undisputed that the Highway 141 grade crossing controls at Avon, Montana, malfunctioned on January 27, 2009. Upon examination of the backup batteries, no liquid water level movement could be seen in them even when shaken. According to the log entry made by the Claimant on January 22, 2009, just five days earlier, he completed an inspection of the equipment and found no problems. He did not add any water to the batteries at that time. According to his testimony, he ". . . assumed . . ." the water levels were fine. Indeed, his log entries did not show any water added during any prior inspections in the previous year.

The batteries and their associated rectifier/charger were removed and set up for a re-enactment type of testing over a six-day period beginning on January 28, 2009. After being properly replenished with water, they charged normally and functioned normally. No faults were found with any of the batteries and no exception was taken to the functioning of the rectifier/charger.

Although the temperature in the bungalow was close to -20 degrees on January 27, 2009, evidence in the record shows that batteries with a proper electrolyte level are good to -40 degrees Celsius.

Given the state of the record, we find the circumstantial evidence present constitutes substantial evidence in support of the Carrier's determination that the Claimant failed to maintain the batteries as required by Carrier regulations and that the Claimant's log entry for January 22, 2009, was not truthful. In light of the Claimant's prior discipline for very similar misconduct only some five months previous to the incident in question, we do not find the Carrier's disciplinary decision to be harsh, excessive, or unreasonable.

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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 24th day of March 2011.