

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41767
Docket No. SG-41770
13-3-NRAB-00003-110416

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Kansas City Southern Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern (formerly Gateway Western):

Claim on behalf of R. Vaughn, for reimbursement of all lost wages, including skill pay, with all rights and benefits unimpaired and any mention of this discipline removed from his record. Account Carrier violated Agreement Rule 34 when it issued the harsh and excessive discipline of a five day actual suspension and a 25 day record suspension against the Claimant without proving its charges in connection with an investigation held on December 20, 2010. Carrier’s File No. K0611-8212. General Chairman’s File No. 11-002-GWWR-185. BRS File Case No. 14605-GWWR.”

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 parties timely processed this claim in the usual and customary manner during on-property exchanges up to and including the highest designated officer of the Carrier. Following conference without resolution, the claim was presented to the Board for final adjudication.

In 2004, the Claimant commenced service with the Carrier. As a Signal Maintainer, he is qualified under Signal Department Rules to perform duties and provide services related to the maintenance and repair of warning systems. On December 20, 2010, the Carrier issued the Claimant a Notice of Investigation alleging that he “. . . failed to properly perform [his] duties in a safe and proper manner while performing service on a Highway Grade Crossing warning system at or near Milepost 274.69 in Louisiana, MO.” In this regard, Train IVNKC-10 reported on December 10, 2010, that the warning system (two signal masks with flashing lights) at the grade crossing did not activate when the train approached the crossing. In other words, the lights did not flash.

On December 10, 2010, the Claimant was assigned to work with a track maintenance crew at the Route 79 crossing in Louisiana, Missouri. This is not a gated crossing; flashing lights alert motorists to an approaching train. The crew's maintenance work caused a false activation of the flashing lights. The Claimant deactivated the warning system by inverting the relay switch, e.g., he turned it upside down, which enabled the track maintenance crew to continue performing its duties. Upon completion of the crew's work, the Claimant left the grade crossing without activating the warning system.

The Carrier cites the following Signal Department Rules, Standards and Instructions for this situation. Rule 2 (Relays) states that “inverting of relays . . . is prohibited” and Rule 7 (Grade Crossing Warning Device) provides that “[w]hen men or equipment are working in the approach of a grade crossing warning device the warning device shall be temporarily disabled as outlined in Highway Grade Crossing Warning Systems (Rule 9).”

Rule 9 states that “the following procedure [9(a) through 9(f)] must be followed.” The Signal Maintainer contacts the Critical Incident Desk (CID) to request an order authorizing the warning system to be disabled. After documenting the order, the CID notifies the Dispatcher/Control Operator, whereupon all trains are instructed that they are required “to come to a complete stop before occupying the crossing and flag themselves over the crossing as per GCOR 6.32.2A[.]” Upon receipt of confirmation that all trains have been instructed accordingly, the Signal Maintainer notifies the CID “how they will disable the crossing (shunt in the approach, jumpering the XR, electronically disabling the tracks, etc.)” and proceeds in that manner. Upon completion of the repairs or maintenance at the crossing and after “all methods of disabling have been removed, the crossing must be tested to ensure that the warning devices . . . are functioning as intended.” When the test satisfactorily demonstrates full functionality, the Signal Maintainer notifies the CID that the crossing is operational and the CID removes the order, thereby restoring the grade crossing to service.

The Claimant testified that he (1) did not contact the CID to request an order disabling the warning system (2) inverted the relay and (3) did not test the warning system at the grade crossing prior to leaving the site. Such constitutes substantial evidence that the Claimant failed to perform his duties in a proper and safe manner on December 10, 2010, in violation of Rules 2, 7 and 9.

This situation could have been prevented, the Organization argues, with “Crossing Disabling Forms and Procedures” used by other Class I railroads when disabling a warning system. This argument is without merit because initiating the process to disable a warning system is documented in the CID’s order and related sequential procedures are set forth in Rule 9. Furthermore, the “Crossing Disabling Forms and Procedures” advocated by the Organization reinforce the use of and adherence to Rule 9 inasmuch as it states “[p]rocedures for disabling crossings as outlined in the KCS Rules Standards and Instructions Manual must be followed!”

According to the Organization, the Carrier violated Rule 34 – Disciplinary Procedure, because it did not conduct a fair and impartial Hearing and the discipline (5-day actual suspension coupled with a 25-day record suspension) is excessive and harsh given the Claimant’s employment record reflecting no prior discipline. There are no particulars proffered by the Organization in support of its assertion that the

Hearing was conducted unfairly and with partiality; therefore, that assertion is not persuasive.

With respect to the degree of discipline imposed, Third Division Award 19537 is instructive in this situation. Discipline “generally has three goals: punishment of an employee, correction and training of the employee, and as an example for training purposes for other employees. The Board has held in many cases (e.g. Third Division Award 16065) that discipline should not be primarily punitive.”

There is substantial record evidence that the Claimant improperly performed his duties in an unsafe manner in violation of the Carrier’s Signal Department Rules, Standards and Instructions. Given this evidence, the discipline assessed is not primarily punitive because it serves to correct improper and unsafe work practices with adherence to proper procedures that document a request to disable a warning system and ensures its safe operation upon return to service.

In view of the Board’s findings, the discipline imposed will not be disturbed because the Carrier did not engage in an unreasonable, arbitrary or capricious act when it investigated the incident of December 10, 2010, and assessed the Claimant with Rules violations based on substantial evidence. In doing so, the Carrier complied with Rule 34 – Disciplinary Procedure. Therefore, the claim is denied.

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 25th day of November 2013.