

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42463
Docket No. SG-42705
16-3-NRAB-00003-140246**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of M. J. Black, K. Cartwright, and R. Opfer, for compensation for all lost wages, including skill pay, with all rights and benefits unimpaired, and any mention of this matter removed from their personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 54 and 56, when it issued the excessive discipline of a Level S (Serious), 30-day Combined Suspension (15-day Actual/15-day Record) with a one (1) year review period to the Claimants without providing them a fair and impartial Investigation, and without meeting its burden of proving the charges it levied against them in connection with an Investigation held on October 17, 2012. Carrier’s File No. 35-13-0017. General Chairman’s File No. 12-060-BNSF-188-SPP. BRS File Case No. 14971-BNSF.”

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 Claimants were Signalmen working off their seniority district in Galesburg, Illinois, upgrading signal systems in the area. They were making wiring changes in the west bound control house on October 8, 2012. Around 12:18 P.M., the train crew on XRUFHMG807A reported to the Train Dispatcher that the signal at mile post 204.60 was displaying an incorrect signal aspect of green over red on the top and red on the bottom. The Department of Transportation (DOT) Federal Railroad Administration (FRA) False Proceed Signal Report identified the cause as: "Signal crew wiring in Bungalow w/Relay logic in preperation [sic] for Signal changes to Vital Controller at MP 204.5 wired Red aspect thru VSTOP relay this caused top red to be displayed with signal displaying proceed aspect at the same time."

The Carrier held a formal Investigation for the purpose of gathering evidence. Based on the evidence provided, Claimants were found to have violated SI TP -101 Signal Instruction Test Procedure – Tests and Inspections and SI 13.1 Signal Instruction – Circuit Changes. As a result, they were issued the discipline disputed here. The Organization protested the discipline, which the Carrier rejected on appeal. The claim was duly processed without resolution. The Organization has now presented the dispute to the Board for hearing and decision.

In the Carrier's view, no procedural violations have resulted in prejudice to Claimant's case. It maintains telephonic testimony is well established in the industry as acceptable. It argues that Claimants, despite years of experience and training, failed to make sure that their installation functioned properly. They completed the task and left to perform work elsewhere without testing that would have revealed the problem.

The Organization protests the fairness of the Investigation, stating that the Hearing Officer led witnesses, and a key witness was allowed to testify by telephone, denying Claimants the right to face their accuser. It also contends that there could be many other causes for the malfunction, such as an open door or rodents. It argues a cause was never determined because there was no Investigation by a Supervisor or Inspector. Further it maintains the evidence did not establish who connected the faulty wire, so there is no basis for disciplining all three Claimants.

The Board has reviewed the transcript. Though there were instances where the Organization lodged an objection to questioning by the Hearing Officer, the recording of objections during the course of a hearing does not establish procedural flaws. Rather it indicates that the Organization exercised its right to make a record of any disagreement it may have had regarding proceedings. Following objection, questions can be rephrased or a foundation for evidence can be properly made.

Upon review of the transcript, the Board finds the allegations of unfairness and denial of due process to be unfounded. The taking of testimony by telephone is not deemed a denial of due process; the Organization was afforded an opportunity to confront the Carrier's witness, provide him with any needed documents and fully cross examine the witness. No denial of due process has been established.

In terms of the provision of adequate training, the Organization refers to the statement of Foreman Kevin Broussard:

"They were [sic] wiring the house in the same way we have wired this whole project and many others on this sub div. That being to land new wires and top nut the old wires to quicken the amount [sic] of time it takes on cutover day. I have said a few times that this was not how we do this back in our own district. Also we were never trained to do this or told what may be landed and what can't be landed until cutover day inside of a running in service bungalow."

This statement establishes that even though Claimants may not have been formally trained on top nutting, they had been wiring the same way for this and other projects and therefore were seasoned in the process. In any event, the Organization's arguments about training miss the point: Claimants should not have left the device without testing it.

Signal Instruction Test Procedure – 101, Tests and Inspections, provides that after modification or repair of circuits or equipment, "a complete operational checkout shall be made to ensure that all circuits and devices operate as intended." The three Claimants worked together, hence all three are accountable for compliance with the rules and proper functioning of the devices they work on.

Third Division Award 42042 is on point. In that case, a signal inspector completed his work but did not test a signal which was subsequently reported to have an improper display of three aspects instead of two. In that case, the Board

found: “Had the Claimant tested the signal after his work, he would have discovered the problem, but he did not perform the test.” In view of the safety hazard that resulted, that Board determined that the Carrier had met its burden of proof.

The record evidence establishes that the three Claimants were working together on the device at issue. They left the device to work elsewhere without testing its functionality. Subsequently, an oncoming train reported the device to be displaying an incorrect signal aspect of green over red on the top and red on the bottom. This created a serious safety hazard which could have been avoided had the device been properly tested before Claimants departed. The Board considered the discipline assessed and finds it to be neither arbitrary nor excessive but consistent with PEPA under the circumstances.

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 28th day of November 2016.