

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42900
Docket No. SG-43747
18-3-NRAB-00003-160612**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(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 Railroad Corp. (METRA):

Claim on behalf of G.L. Arrington for reinstatement to service with compensation for all time lost, including overtime, with all rights and benefits unimpaired and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53, when it issued the harsh and excessive discipline of dismissal 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 June 9-10, 2015. Carrier’s File No. 11-7-957. General Chairman’s File No. 10-D-15. BRS File Case No. 15436-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.

At the time of the incident giving rise to the instant claim, Claimant Glen Arrington was assigned to the position of Vacation Relief Maintainer on the Carrier's Milwaukee District. On March 9, 2015, Claimant was assigned to a vacancy on the second shift from 1400 hh to 2000 hh at the A-5 Tower. Claimant was working on a fail switch indication issue when a commuter service train attempted to cross over the 11-A switch. The train derailed on the Y just west of the 11 switch.

By letter of March 13, 2015, Carrier notified Claimant to attend a formal investigation into the following charge:

“... to develop the facts, determine the cause and assess responsibility, if any, in connection with a derailment occurring on Monday, March 9th, 2015 at the A5 location, when you allegedly allowed an unsafe move by reporting a switch as lined and locked when in fact it was not”

Following several postponements, the investigation was held on June 9 and 10, 2015. By letter of June 18, 2015, Claimant was notified of his dismissal from Carrier's service. The Organization filed a claim on Claimant's behalf on August 13, 2015 (and a corrected version of that claim on August 17, 2015). The Carrier denied the claim by letter of October 7, 2015, and the matter was subsequently progressed up to and including conference on the property, after which it remained unresolved. Accordingly, it is properly before the Board for adjudication.

The Carrier contends that Claimant was ultimately responsible for the train derailment. It urges that Claimant allowed an unsafe move, without the firm knowledge that the switches at issue (11 A and B) were aligned properly for the train's movement. It also alleges that Claimant was inattentive to duty, and cannot be excused by his professed ignorance of the territory he was working on at the time. It points to the physical damage done, as well as to the potential harm in such a situation to fellow employees and the rider public. In the circumstances, the Carrier urges that the discipline of dismissal was measured and not excessive.

The Organization protests that the Carrier has failed to prove the charges leveled against Claimant. It notes in particular that the FRA agent investigating the incident at issue did not find the Claimant solely responsible or even “neglectful.” Rather, the FRA investigator found that there was general confusion surrounding the communication between the Tower and Claimant, and pointedly asked the Carrier how it could prevent such problems in the future. The Organization points out, as well, that Claimant was honest during the initial investigation and during the formal investigation regarding what he thought he was supposed to be doing to restore a steady signal from the switch on the ground to the Tower’s control Board. It maintains that the instant claim should be sustained in its entirety.

The Board has reviewed this case thoroughly, including the lengthy transcript, documentary and photographic evidence, and subsequent correspondence between the FRA and the Carrier. While it can be argued that Claimant might have made a greater effort to clarify which switch (11A or 11B) he should be attending to, there is nothing on this record to suggest that he, alone, was at fault. It is apparent from both Claimant and the Tower Operator’s testimony on the transcript that there was a regrettable, but understandable, confusion in the conversations between the two, and that the Tower Operator was under some pressure to keep the trains waiting to cross the switches at issue as close to “on time” as possible. In light of the entirety of this voluminous record, the Board does not find that the ultimate penalty of dismissal was justified in this case. Accordingly, we find that Claimant’s discipline shall be reduced to a Step 2 violation, that he be returned to service, and that he shall receive back wages for time lost, except for the penalty attendant on the Step 2 violation. The Carrier and the Organization shall review employee records to determine the correct amount of remuneration owed Claimant.

AWARD

Claim sustained in accordance with the Findings.

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 January 2018.