

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43028
Docket No. SG-43585
18-3-NRAB-00003-160333**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Transit America Services, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Transit America Service, Inc:

Claim on behalf of R. J. McNiel, Jr., for reinstatement with all rights and benefits unimpaired, compensation for all time and benefits lost, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it issued the harsh and excessive discipline of dismissal to the Claimant without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on March 6, 2015. Carrier’s File No. TASI-File No.CT-MOW-03062015-0900-0000404-McNiel. General Chairman’s File No. UPCGW-57- 0217. BRS File Case No. 15296-TASI.”

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 essential facts in this case are largely undisputed. On February 3, 2015 the Claimant was employed by the Carrier as a Signal Maintainer and was performing work with outside contractors on Main Track 2 at Bellevue Avenue Crossing, Mile Post 17.10. In order to keep the crossing protection from being activated while the contractor was working on the track, the Claimant applied a shunt on the track. When the contractor operated a high-rail vehicle beyond the shunt, the crossing protection activated, even though no train was approaching. To remedy this situation, the Claimant used jumpers to keep the crossing gates up. Prior to doing so, he did not conduct a job briefing or contact the Signal Supervisor to obtain permission, as required by Carrier's rules. The Claimant has acknowledged that he applied the jumpers to the wrong relay, thereby deactivating the crossing protection system for both Main Track 2, where the contractors were working, and Main Track 1, on which trains were operating.

At approximately 10:13 am, Train 135, traveling at approximately 27 miles per hour with 500 passengers on board, approached Bellevue Crossing on Main Track 1. When the train was approximately 150 feet from the crossing, a car entered the crossing. The crossing protection did not activate until the train was completely through the crossing. Fortunately, the car cleared the crossing before it could be struck by the train.

The Claimant was notified by the Carrier that it intended to impose discipline upon him in connection with this incident. After an informal conference, the Carrier scheduled a formal Investigation that was held on March 6, 2015. By notice dated March 24, 2015, the Carrier informed the Claimant he was dismissed from service.

Based upon the uncontested evidence at the Investigation, we find that the Carrier had substantial evidence to establish that the Claimant failed to follow the required protocols for protecting the crossing, and erroneously wired the jumpers to the wrong relay. These actions resulted in the near-miss incident that could have been fatal to the occupants of the vehicle, and additionally could have caused injuries or fatalities to the train's passengers and crew. The Carrier properly points out that the vehicle could have just as easily been a school bus or a gasoline truck.

The Organization has objected to the fact that discipline was not rendered within fifteen days after the Investigation. The applicable portion of the parties' discipline rule states, "A decision will be rendered within 15 calendar days after completion of the Investigation." It is silent as to the consequences for failing to meet that deadline. The Carrier has asserted it did not receive a copy of the hearing transcript from the outside transcription service until Friday, March 20, 2015. It then issued the discipline the following Tuesday. The Organization insists the discipline should have been issued no later than Saturday, March 21.

The Board recognizes that arbitral panels have, in recent years, overturned discipline in cases where the carriers had not reviewed the Investigation transcripts prior to the issuance of discipline. This had not always been the case. As a consequence, carriers are often at the mercy of court reporters or transcription services who are not under their control. In the instant case, the Carrier issued the discipline on the second business day following its receipt of the transcript. In the absence of a clear rule that would bar the Carrier from imposing discipline after the fifteenth day following the close of the hearing, or any evidence that either the Claimant or the Organization was prejudiced by the delay, we do not find the delay in this case to be unreasonable or a basis for nullifying the Carrier's right to issue discipline.

Based upon the record before us, we find that the Carrier afforded the Claimant a fair and impartial Investigation. The Claimant's actions warranted a severe disciplinary response. We find, however, that permanent dismissal in this case was excessive. Although we recognize the seriousness of the Claimant's offense, and the potentially dreadful consequences, it is the Board's determination that the Carrier did not give adequate consideration to the Claimant's employment record when it decided to discharge him. As we understand it, the Claimant had more than twenty years of service, with no prior discipline. After this incident, the Claimant was honest and forthright in explaining what he had done. We believe this incident has impressed upon him the importance of strict compliance with the Carrier's rules and procedures in the performance of this work that is vital to public safety. Accordingly, we will direct that the Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost. The Claimant should understand that a future violation of this nature will most assuredly result in his permanent dismissal.

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 29th day of March 2018.