

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43053
Docket No. SG-43503
18-3-NRAB-00003-160199**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Canadian Pacific (formerly Soo Line)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific (formerly Soo Line)

Claim on behalf of B. Brandt 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 32, 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 October 8, 2014. Carrier’s File No. 9-00147. General Chairman’s File No. Brandt Dismissal. BRS File Case No. 15287-SOO.”

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.

Prior to his dismissal from service of the Carrier, the Claimant was assigned to the position of Signal Maintainer in Carrier's Signal Department. At the time of his dismissal, the Claimant had more than eight (8) years employment with the Carrier maintaining the territory, the Duplainville Road Crossing, the site in question under review here.

On October 1, 2014, the Claimant was part of a work group that included a Tamper Operator, a Regulator Operator, a Maintenance of Way (MOW) Supervisor. The work group was tasked with surfacing a 400 foot section on double main track in the approach circuit of a highway grade crossing on main track number two. According to the Organization the work group was under a time constraint having one (1) to one and a half (1 ½) hours to complete the assigned task. The Organization explained that the Claimant knowing he would be pressed for time and knowing the crossing circuitry very well performed the crossing disabling procedure but admittedly did so by not following Carrier's Red Book procedure completely and verified that Main Track 1 would not be affected.

As the work at the Duplainville Road Crossing proceeded, Carrier officials arrived at the site to perform an audit of the Claimant's work. Noticing that the crossing was deactivated, Carrier officials initiated a routine efficiency the results of which revealed that the Claimant did not follow Signals and Communication (S&C) Red Book Requirements specifically, step 9 of Section 12.7.1 pertaining to performing a shunt test of the non-affected tracks. As Carrier perceived the Claimant's action of not adhering to Red Book requirements resulting in a potential unsafe condition of the crossing, Carrier took the Claimant out-of-service. The Claimant was advised by letter dated October 1, 2014 he would continue to be withheld from service, with pay, pending a formal Investigation/hearing. By letter dated October 2, 2014 Carrier cited the Claimant for Formal Investigation to be held October 8, 2014 for the purpose of developing all facts and circumstances and placing responsibility, if any, in connection with:

- "Your alleged failure for not following the proper deactivation procedures as per the CP S&C Red Book Requirements for Duplainville Rd, MP 102.2 Watertown Subdivision during a routine efficiency and proficiency test."

By letter dated October 21, 2014 Carrier informed the Claimant that based on the testimony presented at the Investigation/hearing it was determined he had been found in violation General Code of Operating Rules (GCOR) 1.6-Conduct and 1.3.1 – Safety Rules and S&C Red Book Section 12.7.0-Deactivation Process. Carrier further apprised the Claimant that due to the seriousness of this incident he was being dismissed from its service effective immediately. The Organization responded to the Claimant's dismissal by filing the instant claim by letter dated November 23, 2014.

The Organization raised a number of procedural arguments most of which are stated in the Statement of Claim hereinabove all of which we have reviewed and considered and in the final analysis rejected as not having any merit. What remains is this: 1) the Claimant admits he did not follow Red Book requirements in deactivating the crossing warning system asserting as an excuse he was under time pressure to perform the task and that he possesses the expertise to accomplish the task in less time by an alternate procedure less burdensome than the specified Red Book procedure; and 2) On April 14, 2014, just six (6) months prior to the occurrence of events leading to his dismissal from service, the Claimant failed to follow Red Book requirements while removing a crossing from service at Plankinton Ave, MP 85.44, Milwaukee, Wisconsin for which infraction among other rules infractions Carrier assessed the Claimant a 30 day suspension. The Claimant agreed to waive Formal Investigation and hearing associated with these infractions and, as a result, the 30 day suspension was recorded on his personal work record as a suspension for cause. As indicated in the record evidence Carrier administers discipline on a progressive basis, to wit: a 5 day suspension; a 10 day suspension; a 30 day suspension; and then dismissal from service.

It is the sense of the Board as ascertained by the whole of the record evidence that the Claimant is prone to ignoring or simply by-passing established rules, regulations, procedures and policy whenever he determines the circumstances are such to over-ride them in favor of injecting his own procedures. However, when it comes to ensuring working safely and making sure the work environment is safe for himself, his co-workers and members of the general public, established procedures, regulations and policy promulgated by Carrier should, at all times take precedent over ad hoc self-determined actions that countermand such established procedures, regulations, rules and policy. The Claimant's past disciplinary record reveals an employee impervious to established procedures, regulations, rules and policy so as to

conclude the rehabilitation component of progressive discipline would not be applicable to the Claimant should he be reinstated to the employ of Carrier as the Organization requests. Accordingly, based on the foregoing findings, we rule to deny the instant claim before us in its entirety.

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 2nd day of May 2018.