

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43054
Docket No. SG-43634
18-3-NRAB-00003-160025**

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 Dakota, Minnesota &
(Eastern Railroad**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific (formerly Dakota, Minnesota & Eastern Railroad):

Claim on behalf of N. Law for reinstatement to service with any mention of this matter removed from his personal record, compensation for all time lost, including overtime, and payment for any loss of benefits he has suffered as a result of his dismissal, account Carrier violated the current Signalmen’s Agreement, particularly Rule 28, 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 July 24, 2014. Carrier’s File No. 9-00146. General Chairman’s File No. 9-18-14 Law Dismissal. BRS File Case No. 15208-DM&E.”

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, the Claimant was employed as a Signal Maintainer, Bettendorf, Iowa assigned to the "Clinton Signal Maintainer" position in Carrier's Signal Department. On June 26, 2014 the claim date in question, the Claimant was called on short notice to deactivate the crossing warning system at 3rd Street, Mile Post 162.93 in Comanche, Iowa to allow a surfacing crew working in the crossings' approaches to complete their work without stopping traffic. Once the surfacing work was completed, the Claimant enabled the warning system back to operation.

According to the Organization, upon completion of his work, the Claimant enabled the system, completed all testing required, completed all forms involved including a properly filled out deactivation/reactivation form and properly submitted the actions through the Railway Daily Operations Control System (RailDOCS) online reporting as well as reporting the same information to the train dispatcher. The Organization submits that the Claimant followed procedure completely including following Carrier's Red Book procedure of restoring a crossing warning system to service and that when the Claimant left the site, the crossing warning system was working as intended.

According to the Carrier, the Claimant was the last employee to have completed work on the crossing between June 26 and June 30, 2014. On June 30, 2014 at 2:25 pm, local police reported to Carrier the crossing warning system at Mile Post 162.93 was active with no train present which resulted in a trouble ticket being generated for the Claimant. However, due to his truck being repaired at the time the Claimant was unable to respond, so, Signal Maintainer Mike Murray, and a co-worker of the Claimant's was sent to the site instead to troubleshoot and repair any problems found. Murray reported that upon his arrival at the crossing he observed unclaimed jumper wires attached to the crossing warning system disabling the system from detecting the approach of train movement. According to Carrier, upon further review of what initially was reported by the police it was determined that the signal failed to activate to provide advanced warning of train traffic crossing the public road. Murray reported to his supervisor, Manny Ortiz, Manager S&C Quad Cities what he observed about the jumper wires and the fact that he looked at the current form left in the case which indicated the Crossing had been deactivated four (4) days earlier.

Carrier, acting on the information provided by Murray cited the Claimant for a Formal Investigation. By letter dated July 18, 2014, Carrier apprised the Claimant to attend a hearing scheduled to be held July 24th the purpose of which was to investigate his alleged failure to follow the proper procedures while working at 3rd Street, Comanche, Iowa, MP 162.93 Davenport Sub on June 26th in accordance with Rule 28 of the Collective Agreement between the Parties.

By letter dated August 1, 2014, Carrier apprised the Claimant that subsequent to the July 24th hearing, it had reviewed the Investigation transcript and determined the Investigation record as a whole found him responsible for the following violations:

- “Failure to properly restore to service the deactivated CWS (Crossing Warning System) at 3rd St. in Comanche, IA as you reported to the train dispatcher**
- Violation of FRA 234.257 Warning System Operation**
- Violation of FRA 234.209 Interference with Normal Functioning of System**
- Violation of CP Red Book Signal & Communication Requirements Section 12, Paragraph 12.7.2 Reactivation (Restored to Service).”**

Carrier informed the Claimant that as a result of the violations found to have been committed by him he was being dismissed from service.

By letter dated September 18, 2014, the Organization filed the subject claim to Mark Milewsky, Division Engineer and Conducting Officer of the July 24, 2014 Formal Investigation. In the letter of claim, the Organization asserted the following argument in defense of the Claimant:

- “1. Carrier committed multiple violations of Rule 28 to wit: failure to provide the Claimant with a fair and impartial hearing – 28(a); Failure by Carrier to provide the Claimant timely notice of hearing (within 30 days of the incident) in that notice was delivered to the Claimant on July 25, 2014, one (1) day after the hearing was held – 28(b); and Failure by Carrier to provide a copy of the hearing transcript to accompany the notice of discipline – 28(h).**

2. Carrier unfairly linked the Claimant to what was observed and reported by Murray of the crossing in question on June 30, 2014 as the unmarked and unassigned jumper wires could have belonged to anyone other than the Claimant who should have been viewed by Carrier as being no more of a suspect than any employee in the entire Signal and Communications department, as any S&C department employee would have the key providing access to the warning system equipment.
3. As four (4) to five (5) trains operate through the 3rd Street Crossing daily, it would seem extremely unlikely that the deactivation problem would go unnoticed and not reported by alert train crews and crossing traffic, especially at night.”

Carrier acknowledges it was an oversight on its part not to provide a transcript to the Claimant but noted the Organization received the transcript and wonders why the Organization did not share its transcript with the Claimant. As to not providing timely notice to the Claimant pertaining to the particulars of the Formal Investigation, Carrier related it sent the all notices to the address the Claimant had on file. Carrier asserts the mistake in the mailings was due to the Claimant not providing it with updated address information. As to Signal Maintainer Murray finding unmarked jumper wires connected to the Crossing Warning System, Carrier notes this was the method used by the Claimant to disable the System on June 26, 2014.

The Board notes that four (4) photos of the Crossing were taken none of which reveal the irregularities testified to by Carrier witnesses. The fact that in the interim four (4) days between when the Claimant serviced the Crossing Warning System and Maintainer Murray when dispatched to the site observed jumper wires were attached to the CWS thus disabling the warning system, 36 trains had passed through the crossing with no incident and no report the warning system was not operative. While Carrier notes that the Claimant used jumper wires to deactivate the warning system on June 26, 2014 it was not able to establish the jumper wires found by Murray were those belonging to the Claimant. The Board finds the facts and circumstances developed in the record evidence simply do not add up to make any sense. What seems to be the case is that the Claimant was made the fall guy since there was no reliable explanation as to who would deactivate the warning system and the reason(s) for so doing. As to what in retrospect appears to be a mystery, we are of the view that the Claimant should be reinstated without back pay or other benefits and when

reinstated should be provided re-training in order to qualify to assume the duties of Signal Maintainer.

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 2nd day of May 2018.