

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43116
Docket No. SG-42657
18-3-NRAB-00003-140351**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railway Company:

Claim on behalf of M. E. Taylor, for reinstatement to service with compensation for all time lost, including skill pay, 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 47, when it issued the harsh and excessive discipline of a 5-day actual suspension and 25-day record suspension 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 April 25, 2013. Carrier’s File No. K0613-2020. General Chairman’s File No. 13-014-KCS-185. BRS File Case No. 14990-KCS.”

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.

After Investigation held April 25, 2013 and by letter dated May 3, 2013, the Claimant – an employee in the Carrier’s service since October 2006 – was given a 30-day suspension (5 days actual, 25 days record) on allegations that he failed to perform his duties in a safe and proper manner resulting in a derail not properly working.

On March 5 and 6, 2013, the Claimant was assigned as a Signalman completing tasks associated with the pre-test and cutover to a new Centralized Traffic Control signal system which went live on March 6, 2013. The discipline in this case centers on allegations concerning the proper functioning of the North Harriet Street derail switch located at MP 556.16 in Shreveport, Louisiana which was part of the Claimant’s assigned duties on those days and part of the cutover project.

The Claimant’s assigned duties included removal of cabling from the old signal system and the tie-in with cables to the new signal system along with required testing. On April 17, 2013 – six weeks after the Claimant performed his assignment on March 5 and 6, 2013 – it was discovered that the North Harriet Street derail switch was not connected to the CTC signal system, which caused the derail switch to not work properly and required a rewiring of that switch.

Substantial evidence does not support the Carrier’s contention that the Claimant engaged in the charged misconduct of not properly performing his duties with respect to cutover of the North Harriet Street derail to the CTC system.

First, the Carrier focuses on the day of the cutover – March 6, 2013. According to the Carrier, “[i]t’s clear from the [Claimant’s] own testimony that no testing was done on the day of the cutover to ensure everything was working properly at the Harriet Street location (MP 556.16).” Carrier Submission at 5.

The record does not support the Carrier’s contention that the Claimant effectively admitted in his testimony that he failed to perform the appropriate testing or other assigned duties on March 6, 2013.

The Board accepts the Carrier’s assertion that six weeks after the Claimant performed his duties it was discovered that the derail at the Harriet Street location was not functioning properly. Again, the Carrier relies upon “... the [Claimant’s]

own testimony ...” to establish that on the day of the cutover – March 6, 2013 – that no testing was done and thus the Claimant engaged in the charged misconduct. However, contrary to the Carrier’s assertions concerning the Claimant’s testimony, the Claimant testified that he, in fact, performed testing on the March 6, 2013 cutover day (Tr. 57-58) [emphasis added]:

“Q: ... [O]n the date of the cutover, did you do any – did you do any wiring at the North Harriet Street Location for the cutover?

A: On cutover day, yes, I moved the wires that had to be moved –

Q: Okay.

A: – after I pulled the old cable out.

Q: Okay. Okay. And after that, did – was there any testing of – disarrangement of the wiring done or was it required?

A: Yes, that – right after that is when the cutover started, so we did all of the testing from – from the whole – from each control point. You’ve got control points on both sides and Harriet Street’s right in the middle and we did all the block testing and everything in between so, yes, that – that was all tested.

Q: Okay. And no exceptions taken, everything working fine?

A: That’s correct.”

Therefore, the record does not establish through the Claimant’s testimony as the Carrier asserts that no testing was performed on the March 6, 2013 cutover date.

Second, consistent with the Claimant’s assertion that he performed all assigned duties with respect to the North Harriet Street derail, Manager, Engineering and Projects K. Laszewski (who was involved in the cutover) testified that he believed that all the tests were performed on the March 6, 2013 cutover date (Tr. 33):

“Q: When you left the jobsite the afternoon – I believe it was the 6th of March – was there any doubt in your mind that every piece of equipment installed and placed in service that day was tested properly and working as intended?”

A: I believe it all was.”

Third, between March 6, 2013 and the discovery on April 17, 2013 that the North Harriet Street derail switch was not connected to the CTC signal system, the Claimant performed no work at the North Harriett Street derail. Tr. 58. However, the record shows that approximately three weeks after the March 6, 2013 cutover when the Claimant performed his duties, another employee viewed the wiring for the North Harriett Street derail and called Manager Laszewski to advise him that the wiring “... looked strange to me”, and Laszewski instructed him to contact a Signal Inspector who stated that “it was right.” Tr. 17. The record further discloses that personnel other than the Claimant had access to the equipment at the North Harriett Street derail prior to April 17, 2013 and performed various functions at that location. Id.

Thus, contrary to the assertion of the Carrier that the Claimant improperly performed his duties and specifically did not perform the required testing on the March 6, 2013 cutover date, the record shows that on that cutover date: (1) as Claimant testified, he performed the required tests; (2) Manager Laszewski was of the opinion that the equipment was properly installed and tested; and (3) a subsequent viewing of the wiring performed by the Claimant conveyed to a Signal Inspector resulted in a conclusion from a Signal Inspector that “it was right”; and (4) other signal personnel had access to and performed various functions at that location prior to April 17, 2013. Given that evidence and further given that there was a six week lapse from the Claimant’s performance of his duties at the North Harriet Street derail on March 6, 2013 until the problem was discovered on April 17, 2013 and that the Claimant performed no other duties at that location between March 6 and April 17, 2013 while other employees had access to and performed functions at that location during that period, we find that the Carrier has not met its burden to establish that whatever may have caused the problem with the North Harriet Street derail discovered on April 17, 2013 was, through a showing of substantial evidence, attributable to the Claimant’s failure to perform his duties as charged.

As a remedy, the suspension shall be removed from the Claimant's record and the Claimant shall be made whole in all respects.

In light of the result in this matter, the Organization's procedural arguments are moot and need not be addressed.

AWARD

Claim sustained.

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 30th day of May 2018.