

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43402
Docket No. SG-44178
19-3-NRAB-00003-170244**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Illinois Central Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of A. Jackson, for reinstatement to service with compensation for all time lost, including overtime, with all rights and benefits unimpaired, including any training he missed to ensure he is qualified to perform the duties of a Signaller, and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 35, and the Training Agreement, when it issued harsh and excessive discipline of dismissal against 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 February 4, 2016. Carrier’s File No. IC-BRS-2016-00003. General Chairman’s File No. IC-002-16. BRS File Case No. 15594-IC.”

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 Claimant was originally hired by the Carrier in November 2014. Rule 4, Training, states, in relevant part:

(a) "The company will provide one (1) year of training for assistants.

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(d) Training periods:

FIRST SIX MONTHS

1. Assistants will work the first one hundred and twenty (120) calendar days with a signal gang, spending at least two (2) weeks during this time with a signal maintainer.

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2. Assistants who pass the prescribed examinations, complete the number of lessons required and spend a minimum of another thirty (30) days with a signal maintainer will progress to the next period.

SECOND SIX MONTHS

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3. The assistant will spend a minimum of another thirty (30) days with a signal maintainer....
4. The assistant will spend a minimum of another sixty (60) days with a signal gang....
5. The assistant will spend a minimum of another sixty (60) days with a signal maintainer, inspector or technician...."

All told, assistants in training are expected to spend 120 days working with a signal maintainer, inspector or technician.

In November 2015, the Claimant had just finished his one-year training period. He started working on his own on December 23, 2015. On December 24, 2015, the Claimant worked at the Homewood tower control point at milepost 23.87 on the Chicago Subdivision. He performed a GI test on a crossover switch from

main number one to main number two; however, he only received track authority on main number one and not on main number two. He also performed a test on the 13A switch without track authority. On December 30, 2015, the Claimant worked on the 2 switch at the Stuenkel control points; however, he passed the GI test on the 1 switch instead. On January 7, 2016, the Claimant was working at Wildwood control point without track authority. That same day, the Claimant's supervisor e-mailed him a list of ten tests that needed to be done on January 8. Mr. Jackson only performed 3 of the tests during his tour of duty, again without proper track authority. By letter dated January 15, 2016, the Carrier notified the Claimant that it would conduct an Investigation into these incidents. The Investigation was held February 4, 2016. By letter dated February 12, 2016, the Carrier notified the Claimant that he had been found guilty of failing to follow instructions, failing to efficiently perform his duties, failing to properly perform, conduct and/or complete Signal GI tests, and failing to obtain and/or establish proper track protection, and that the assessed discipline was dismissal from service.

The Organization filed this grievance, alleging that the Claimant had not been properly trained and that, under the circumstances, dismissal was too harsh a discipline. The record on the property does not include records documenting the Claimant's training, especially whether he spent the required amounts of time actually working in the field with other signal employees. At the Investigation, the Claimant testified that during the year of his training, he spent at most a month working one on one with a signal maintainer. He also testified that he told management that he did not think he was ready to work as a signal maintainer, but the Carrier ignored his concerns. The Claimant was not afforded the minimum training required under the Agreement, and the Carrier failed to document his training history to ensure that he met the requirements set forth in the Agreement. The Carrier's failure to adhere to its own training program contributed to the Claimant's inability to perform his work properly. The Carrier must not be allowed to avoid its training responsibilities and then punish its employees for its failures. Under the circumstances, dismissal was unfair and unjust. Mitigating circumstances should be considered, and prior Boards in similar cases have held that inadequate training operates as a mitigating factor, especially where the Carrier is aware that the employee lacks proper training and has concerns about his ability to do the job. The Claimant followed his Supervisor's instructions and complied with the Rules to the best of his ability.

The Carrier contends that the Investigation produced substantial probative evidence that the Claimant failed to perform his duties as alleged; he was conclusively proven guilty of the charges against him. He violated USOR H by showing he completed tests on switches he did not work on during his shift and by failing to complete the instructions given to him. He was also guilty of violating OTS 100 and USOR 103 by failing to have the proper track authority and/or protection while working on the tracks. The Investigation was fair and impartial. The penalty assessed was warranted, given the seriousness of his infractions and short length of service. The Claimant was negligent and careless by failing to ensure he was properly protected while working on and around tracks, and he failed to follow instructions given to him by his supervisor.

The record establishes that the Claimant did not obtain track authority as he should have, that he worked on the wrong switches on several occasions, and that he failed to complete at least one assignment given to him by his supervisor, to complete ten switch tests on January 8 2016. These are serious failures; obtaining track authority or protection is fundamental for anyone working on or near the tracks. At the same time, the Carrier failed to show, during the Investigation, that the Claimant did receive the training that he was entitled to under the Agreement, especially with respect to spending time in the field with signal maintainers, inspectors and technicians. The Carrier has an obligation to train employees so that they can safely perform the duties of their positions. The Board notes too that the incidents for which the Claimant was terminated occurred immediately after he was assigned to work alone in the field. While the Carrier has the obligation of training employees so that they can safely perform the duties of their positions, employees also have a responsibility, to speak up when they feel uncomfortable about performing an assigned task or when they believe that their training has been inadequate. The Carrier cannot complete an employee's training if he or she does not indicate to the Carrier that there is a problem and what his or her concerns are.

On balance, the Board is of the opinion that the Claimant's training was seriously inadequate and that that contributed significantly to his inability to perform his job duties as expected. However, he bears a responsibility for not having spoken up to notify management that he felt insufficiently trained to perform the duties assigned to him. The Claimant should have another chance to establish his ability to work safely and to standard, and he shall be returned to work. Given the amount of time that he has been off the property, however, it is not inappropriate to require him to return to the training program so that he can complete the program as negotiated and

agreed by the parties in the Agreement. Because of the seriousness of the Claimant's infractions and his own failure sufficiently to notify management about his concerns, ordering back pay is not appropriate.

AWARD

Claim sustained in accordance with the findings above.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant 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 18th day of January 2019.