

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43405  
Docket No. SG-44595  
19-3-NRAB-00003-180022**

**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 B.Q. Alexander, for removal of the 1-year disqualification from the Signal Inspector’s position, 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 the Carrier violated the current Signalmen’s Agreement, particularly Rule 35, when it issued the harsh and excessive discipline of a 30-day actual suspension with a 30-day deferred suspension, and a 1-year disqualification from the Signal Inspector position against the Claimant, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on September 26, 2016. Carrier’s File No. IC-BRS-2016-00010. General Chairman’s File No. IC-008-136. BRS File Case No. 15719-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.

At the time of the events giving rise to his discipline, the Claimant was a Signal Maintainer for the Carrier, working in and around Kenner, Louisiana. At the time of the incident that resulted in his discipline, he had been working for the Carrier for nineteen years and as a Signal Maintainer for about seven months. The responsibilities of a Signal Maintainer include ensuring that signal bungalows and junction boxes are properly maintained per Carrier standards. On August 24 and 25, 2016, Manager of Signal Maintenance John Rath and Signal Supervisor Gerald Healy performed an inspection on the Claimant's territory between milepost 905 and North Freiner on the McComb Sub and found five locations to be out of compliance due to various factors: dirty or missing air filters; missing air duct seals; the presence of geckos (and their eggs) and insect nests in the bungalows; a temperature probe not being properly connected; track wires under spikes or improperly clipped; and weeds growing around at least one of the signal houses. Based on Rath and Healy's findings, the Carrier notified the Claimant by letter dated September 1, 2016, of an Investigation into "whether you violated any Company rules, regulations and/or policies in connection with you allegedly failing to properly perform duties required as a Signal Maintainer by allegedly failing to properly seal and secure signal facilities, and/or falsifying test results, and/or failing to properly perform test on the McComb subdivision, during the period between January 1, 2016, and August 25, 2016. The Investigation was held September 29, 2016. By letter dated October 7, 2016, the Carrier notified the Claimant that he had been found guilty of violating FRA 236.3, GI 302, GI 305a, GI 310b3, GI 332a, SCP 7, and SCP 30a. The penalty assessed was 30 days Actual Suspension, 30 days Deferred Suspension and a one-year disqualification from working as a Signal Inspector for a period of one year. The Organization filed a timely claim. The parties having been unable to resolve the dispute through the grievance procedure, the matter was submitted to the Board for a final and binding decision.

The Carrier contends that there was substantial evidence presented at the investigatory hearing that the Claimant had violated numerous rules and regulations and failed to keep up with the signal equipment under his jurisdiction. The Claimant made excuses as to why various things had not been fixed, but even with the excuse that it was hard to get materials from his supervisor, it is questionable how he could

allow conditions to perpetually get worse or that he could have shown passing tests at locations with the conditions that he was aware of. The Organization acknowledges that the Claimant had “housekeeping issues.” But such issues can have major effects on the signaling system that governs the movement of trains through communities. The Claimant was afforded a fair and impartial Investigation. The discipline assessed was warranted, given the serious consequences that could have arisen from his rule violations and his prior disciplinary history.

The Organization has raised a number of objections to the discipline. First and foremost, the record establishes that the Claimant did not violate the charged Rules. While certain aspects of the locations were not in compliance, there was no evidence that the Claimant was aware of the problems, as a number of tests are run every twelve months and he had only been in the position for seven months. As the Claimant testified, each day he receives a text message telling him which locations to visit and what tasks to perform there, and he follows those instructions. He had informed his supervisor of equipment failures that he was aware of, such as an air conditioner and a generator that the Carrier cited, but they were not repaired. As for other problems, the Claimant was aware of them and had requested supplies to fix them. In Louisiana in the summer, air filters become dirty within a single day. The Claimant had asked his supervisor for new air filters to install but had not received any. He purchased some supplies himself but could not afford all of what was needed; moreover, it is the Carrier’s responsibility to keep the Signal Maintainers supplied with what they need to do their job. He had sprayed the weeds that Rath and Healy cited. With respect to geckos living in the bungalows, geckos are a fact of life in hot weather in Louisiana, and this inspection occurred at the end of August; in addition, there had been local flooding recently, and the geckos had sought higher and dry ground. There is no realistic way to keep them out. Given that the Claimant’s supervisor failed to supply him with the basic materials he needed to perform his duties, it was improper for the Carrier to jump to the conclusion that the Claimant improperly performed his duties as a Signal Maintainer. The Carrier has failed to carry its burden of proof. Even if the Board finds that the Claimant somehow violated any rules, the discipline was harsh and excessive. A coaching session or a letter would have properly guided the Claimant’s actions and understanding of what was expected of him under the circumstances. Anything more would be punitive and inconsistent with the principle of progressive discipline, especially for an employee with 19 years of service.

Having reviewed the record before it, the Board concludes that there was some culpability on the part of the Claimant, in that not all of the problems found were

equipment-related. Moreover, the Claimant is, after all, a long-term employee who should know what is required to perform the duties of his position. At the same time, the record does not support a guilty finding on a number of the charges against the Claimant: he requested but did not receive supplies he needed. There was no indication he had knowledge of some of the equipment failures; others he was aware of and had informed his supervisor about. All things considered, there was cause for some discipline, but not at the level assessed by the Carrier. The goal of progressive discipline is to encourage employees to improve their performance. Given the circumstances that pertained, counseling on what to do or additional training would have been preferable. The 30-day actual suspension shall be reduced to 10 days. The 30-day deferred suspension and one-year disqualification shall be removed from the Claimant's record.

**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 18th day of January 2019.