

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43488
Docket No. SG-44300
19-3-NRAB-00003-170044**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when the award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of E.S. Aldana, Jr., for compensation for all time lost, including overtime and 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 Rules 54 and 56, when it issued the harsh and excessive discipline of a Level S, 15-day actual suspension, and a 15-day record suspension, with a 3-year review period 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 May 28, 2015. Carrier’s File No. 35-15-0045. General Chairman’s File No. 15-029-BNSF-119-D. BRS File Case No. 15507-BNSF.”

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 assigned to a Signal Maintainer position in Fremont, Nebraska. On February 11, 2015, the Claimant was given notice of an Investigation in connection with the following charge:

“An investigation has been scheduled...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to properly protect the switch at South Papa on the Sioux City Subdivision, MP 32.00, per Signal Instructions at approximately 1030 hours on February 10, 2015 and your conduct by manually manipulating the switch adjustments, allowing trains to move over the unprotected switch point with no restriction.”

After a formal Investigation on May 28, 2015, the Claimant was found to be in violation of MWOR 1.6 Conduct, TP 103 and SI 6.10 RCPS (Remote Controlled Power Switch) Wayside Equipment) and was assessed 15 days Actual Suspension and 15 days Record Suspension, and a Three-Year Review Period.

On February 10, 2015, the Claimant was called because the switch at South Papa in his territory was reported as “out of correspondence.” The Claimant determined that the external point detector rod on the switch had broken and was no longer connected to the internal point detector rod. As a result, the Dispatcher was unable to remotely change the direction of the switch or determine if it was correctly lined for the movement of trains. The Claimant determined that he needed to retrieve a part from another location to repair the switch. He manually manipulated the switch to force it to establish switch correspondence until he retrieved the part to repair the switch. The Claimant then remained at the switch point while the Dispatcher ran the trains over the switch, observing the lined and locked switch and the train movement.

The Carrier contends that the discipline is appropriate because the Claimant failed to protect a switch and improperly manually manipulated that switch to bypass safety restrictions. The Carrier contends that the Claimant’s actions were potentially

dangerous, because the integrity of the system was compromised. The Carrier contends that the Claimant's actions were careless of the safety of himself and others and negligent. The Carrier contends that the Claimant failed to take the safest course possible.

The Organization contends that the Carrier has failed to meet its burden of proof that a violation occurred. It also contends that the level of discipline was harsh and excessive in violation of Rule 54. The Organization contends that the Claimant took the safe course of action to protect the movement of trains when he checked that the switch was lined and locked and then observed the train movements over the switch. The Organization contends that the Training Department confirmed that when a switch is lined and locked, a track warrant can be issued over the switch. The Organization contends that Signal personnel are routinely called and asked to manually line switches in order to allow trains to proceed at normal track speed, just as the Claimant had done here. The Organization also contends that the Carrier failed to provide proper training and education on the new RCPS system.

In order to prove that the Claimant violated Rules MWOR 1.6 Conduct, TP 103 and SI 6.10 RCPS, the Carrier must prove that the Claimant failed to act safely and properly under the circumstances. Based upon the record, the Board finds that the Carrier failed to satisfy its burden of proof.

Unlike many cases that come before this Board, this one contains no evidence that any mishap occurred as a result of the Claimant's actions. The Carrier charged that the Claimant's course of action had the potential for danger, arguing that he compromised the integrity of the signal system. The Carrier was concerned about the potential for risk to the public, the crew, and other employees, but presented no evidence that the Claimant failed to follow the safest course. The record shows that the Claimant stood and observed as three trains safely passed the switch after he manipulated it. The Claimant clearly communicated his intentions and actions with the Dispatcher. The Carrier's witnesses disagreed with the steps that the Claimant took, but a disagreement does not prove that the Claimant was careless, especially where no accident or incident was shown. After careful review of the entire record, this Board finds that the Carrier has failed to prove a violation of MWOR 1.6 Conduct, TP 103, or SI 6.10 RCPS.

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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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of March 2019.