

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43902
Docket No. SG-44863
20-3-NRAB-00003-180346**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 E.D. Carter, for 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 Carrier violated the current Signalmen’s Agreement, particularly Rule 35, when it issued the harsh and excessive discipline of a 60-day actual suspension 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 February 9, 2017. Carrier’s File No. IB-BRS-201700011. General Chairman’s File No. IC-010-17. BRS File Case No. 15758-IC. NMB Code No. 119.”

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 that resulted in his discipline, the Claimant had been working for the Carrier for approximately nine years. From September 21, 2016, through January 17, 2017, the Claimant was working as a Signal Maintainer on the McComb Subdivision. On January 17, 2017, several managers and supervisors performed a site audit on the Claimant's territory. At the Central Avenue crossing, they discovered that several of the same issues that had been identified in a previous audit, conducted in August 2016, were still present. The management team moved on to the East Bridge Junction and other locations and found multiple instances of a lack of maintenance. The audit also revealed that the Claimant had falsified or improperly performed tests on September 21, 2016; on November 30, 2016; and on January 13, 2017.

By letter dated January 27, 2017, the Carrier sent the Claimant a notice of investigation, which was held February 9, 2017. At the hearing, Carrier witnesses described the sub-par conditions that they found. Defects that had been identified during the August 2016 site audit had not been corrected. The first switch the management team came to was buried in ballast and in poor condition, with its rods buried in mud. The Claimant acknowledged that when he had tested and passed the switch three days before, the rods were buried in the mud. Batteries in a tub were dirty and the cable connection corroded. The Claimant stated that he had last cleaned the batteries "just the other day." Another switch at East Bridge Junction was out of service but missing a yellow tag, and the Claimant acknowledged that he had never tested it. At the Central Avenue crossing, the flashers were not working properly, the gate light spacing was incorrect, and there were other defects in maintenance. Claimant testified that he had been unable to effect certain repairs due to a lack of equipment and supplies and due to equipment configuration issues that made it impossible to maintain certain switches as normally expected. He had been responsible for the territory since 2012.

By letter dated February 17, 2017, the Carrier notified the Claimant that he had been found to have violated USOR, General Rule B, Reporting and Complying with Instructions; USOR General Rule H, Furnishing Information and Conduct; USOR General Rule I, Duty Reporting or Absence; and USOR General Rule P, Employee Conduct. The discipline assessed was a 60-day suspension.

The Organization filed a timely appeal. The parties having been unable to resolve the dispute during the grievance process, the matter was appealed to the Board for a final and binding decision.

The Carrier contends that the basic facts of the case are not in dispute. The record established conclusively that the Claimant was guilty of failing to maintain the equipment under his jurisdiction and failing properly to perform or falsifying tests on it. The investigation was fair and impartial. The level of discipline assessed was appropriate, considering Claimant's rules violations and the discipline given to other employees in similar circumstances. According to the Organization, the Claimant's alleged misconduct was minor in nature, housekeeping rather than safety-critical issues. The Claimant was honest and remorseful, and his disciplinary record was clear. A 60-day suspension was harsh, unjust and excessive. The Claimant should have been counseled, not suspended.

The record establishes that the maintenance problems identified by the site audit team were real, and that there was cause for discipline. While none of the problems identified presented critical safety issues, there were enough individual "housekeeping" issues to warrant concern on the part of the Carrier that the Claimant was not performing his duties at the level expected of employees who work in the field without direct and immediate supervision. The Claimant identified certain areas that he believed could not properly be maintained. When that happens, he should contact his supervisor for guidance, not simply ignore the matter. The Board is of the opinion, however, that the level of discipline assessed should be reduced on his record to a 30-day suspension, although the Claimant is not entitled to any back pay.

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 28th day of January 2020.