

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44325
Docket No. SG-45498
21-3-NRAB-00003-190296**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Connex Railroad LLC

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Connex Railroad, LLC:

Claim on behalf of E. Jean, for immediate reinstatement to his former position with 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 Rules 39 and 40, when it issued the harsh and excessive discipline of dismissal 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 March 8, 2018. Carrier’s File No. SCL-04-10-18D. General Chairman’s File No. SCL-04-10-18D. BRS File Case No. 16016-Connex. NMB Code No. 173.”

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 Carrier maintains that the Claimant admitted the cited violations. His actions were a serious breach of the safety rules and could have resulted in a catastrophic collision. The evidence shows that the Claimant was on scene maintaining a signal and improperly released protection. A train went through at nearly maximum speed and the gates did not lower in advance of the train.

The Organization counters with the Claimant's version of the incident. According to the Claimant, two trains went by and the signals worked and the gates lowered. Only when the third train went by did the gates not properly lower. Further, there was no operation test run on the crossing to determine whether there was a fault in the system. And no information was downloaded to indicate whether there was a fault with the circuits. The Carrier merely assumed that the Claimant was guilty and did no investigation of the occurrence. A failure to properly investigate the matter requires the claim to be granted because there is not substantial evidence in the record to support the dismissal.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

Here, the following conversations were in evidence for February 15, 2018, when the Claimant was working at the grade crossing at Sunset Boulevard:

"Dispatcher: RTA Dispatcher Sorts.

Mr. Jean: Hey, Sorts. Go ahead and remove the false partial off –

Dispatcher: All right. Hold on a second. All right.

Mr. Jean: Yes.

Dispatcher: All right. Show Summit Boulevard working as intended at 1856, TMS.

Mr. Jean: 1856, TMS.

Dispatcher: You got it. Thank you, sir.

Mr. Jean: All right. (TR 11)"

The evidence shows that the Claimant released the protection. A short time later there is a call from a passing train to Dispatch.

“Crewmember: (Indiscernible). I’m going to hold my tongue on this one, but you better get someone out there to talk to that – the Signal Maintainer at Summit Avenue. I just came through Summit Avenue about 77 miles an hour, and on the entire east side of the crossing, both of the gates are up. I almost plugged the train. So I would have rather protect it than had somebody call back and they gave you the crossing, and then I’m coming through there at 77 miles an hour and gates are up. So you-all might want to have a talk with that Signal Maintainer at that crossing right now.

Dispatcher: All right. 638 is saying some of the gates are stuck up at Summit Boulevard, 973.3; is that correct, over?

Crewmember: Yeah, the Maintainer is there. No word from the Maintainer whatsoever and I’m flying through there at 77 mile an hour. I have my Conductor as a witness and the gates. (TR 12).”

Dispatch contacted the Claimant to ascertain the situation and inquire about the non-functioning crossing gates as the train passed.

“Dispatcher: Hey, Manny. This is (indiscernible) dispatch. You still at Summit Boulevard?

Mr. Jean: Yes.

Dispatcher: All right. 638 said that he went by the crossing and the whole east side gates never came down.

Mr. Jean: Yeah, it’s because I’m still working. I released the protection but I’m fixing the lights and stuff out there.”

The evidence is clear that the gates did not lower as the train passed Sunset Boulevard. The evidence is also clear that the Claimant was working at the crossing and had released the protection before the train passed. When Dispatch contacted the Claimant, he stated that he was still working on the repairs to “the lights and stuff out there.” Although the Organization argues that a download was not performed and the evidence is therefore insufficient to establish the infractions, there is no Agreement requirement that a download be performed or that tests be performed on a signal.

Here, the the Claimant immediately reported that he was on scene and working on “the lights and stuff out there” yet released the protection. The Carrier has established substantial evidence of the infraction.

The Organization also argues that there are mitigating factors which warrant a lesser discipline, including an earlier return to work that included remedial training – remedial training that never occurred. Here, although the Claimant may not have received earlier remedial training, he nonetheless released protection from a busy grade crossing while still working on the signals and lights. The prohibition against releasing protection prior to when protection should be released is a basic tenet of railroading. Absent remedial training, every railroader knows or should know that protection should not be released prior to the work being completed and the situation being safe to warrant the release.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of January 2021.