

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44873
Docket No. SG-47295
23-3-NRAB-00003-220390**

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Canadian Pacific Railway**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific Railway (formerly Soo Line):

Claim on behalf of B. Humphrey, for compensation of all lost time, including overtime, with compensation for all loss of benefits, and any mention of this matter removed from his personal record; account Carrier violated the current Signalmen’s Agreement, particularly Rule 32, when it issued the harsh and excessive discipline of a 45-day suspension between January 27, 2021 to March 12, 2021, to 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 1, 2021. Carrier’s File No. 2021-00021252. General Chairman’s File No. 2021-00021252. BRS File Case No. 5311. NMB Code No. 204 – Minor Discipline: Miscellaneous/Other Not Specified Above.”

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.

On January 21, 2021, a signal failure occurred at the Vermillion Control Point, resulting in a train being switched to the wrong route. It was discovered that, due to a design error in the circuit plans, a newly installed switch machine was not wired properly, and tests designed to confirm the proper installation had not caught the error. Claimant B. Humphrey was one of the signalmen who wired the switch machine and participated in the testing during a cutover on November 17, 2020.

By letter dated January 27, 2021, Claimant was notified to attend a hearing to develop the facts and place responsibility, if any, in connection with the signal failure at Vermillion Control Point on January 21, 2021. The notice indicated possible violations of GCOR 1.6 Conduct, GCOR 1.13 Reporting and Complying with Instructions, S&C Construction Red Book 100.1.0 Important, S&C Construction Red Book 100.2.0 Applicable Regulations, and S&C Construction Red Book 104.4.9 Power Switch Machines. Signal Foreman D. Campbell, who is the claimant in Case 3-220389 on our current docket, was charged with the same alleged offenses. The hearing for both employees was held February 1, 2021, after which the Claimant was found to be in violation of the cited rules, and by notice dated February 11, 2021, he was assessed a 45-day suspension.

The Organization submitted the instant claim, which the parties handled on the property according to the applicable agreement. The matter now comes to us for resolution.

The Organization challenges the discipline assessment on both procedural and substantive grounds. It first contends that the Carrier violated Agreement Rule 32(d) when it did not afford the Claimant five days advance written notice of the hearing. It states that the notice of investigation arrived at the Claimant's address on January 29, 2021, only three days prior to the hearing, depriving the Claimant of ample time to prepare. The Organization also objects that the notice of investigation did not specify that the hearing would be held jointly with another employee, and that the Claimant was denied a fair and impartial hearing by that process. The Organization also objects that the charge was not sufficiently precise so as to allow the Claimant to mount a defense. It states that the Claimant was nowhere near the Vermillion Control Point on the date of the incident described in the notice.

With respect to the merits, the Organization contends that the Carrier did not meet its burden of establishing with substantial evidence that the Claimant was in violation of the cited rules. It states that numerous employees were involved in the cutover on November 17, 2020, and that the assignment of installation work and testing was not specific to any individual. The Organization asserts that the Claimant's manager was the lead in the testing of the equipment, and that the Claimant was assigned to the relay house portion of the testing to provide information to the manager and execute the manager's commands. It points out that the Claimant was not aware of the circuit design flaw on the plans issued by Signal Design, and it states that no one involved in the installation, including the manager, felt that the work was not completed properly. The Organization concludes that the Carrier has merely speculated that the Claimant bore responsibility, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains that there is no reason to disturb the discipline assessment. It states that the Claimant received a fair and impartial investigation, and that he was afforded all applicable rights during that process. The Carrier asserts that the notice of investigation was sufficiently detailed and that it was sent in accordance with the agreement requirements, and it argues that the Organization's denial of an offered postponement indicates that it was prepared to proceed with the hearing. It also contends that there is no prohibition against holding a hearing involving more than one charged employee, and that other procedural arguments were waived when they were not raised at the hearing.

With respect to the merits, the Carrier states that the record contains substantial evidence to support the finding of guilt. It states that the Claimant was working at the location during the cutover, and that he was involved in the wiring process. The Carrier argues that if the Claimant would have properly tested the equipment as required by the rules, the design error would have been noticed, but that the failure to do so resulted in a potentially catastrophic incident. It points to the testimony of the S&C Director as establishing the relevant facts, including the lack of proper tests on the circuitry. The Carrier notes that subsequent proper testing confirmed the improper installation, and it states that both the Claimant and his Foreman were jointly responsible for the test, as they had been given proper instruction in the form of an email containing a checklist for the proper testing.

With respect to the discipline assessment, the Carrier states that the Claimant's actions constituted a Major offense under its Hybrid Discipline and Accountability Guidelines. It asserts that the incident put other employees and the public in immediate danger, and that more serious consequences could have occurred. The Carrier states

that there was nothing arbitrary or capricious about the assessment here, as the Claimant could have been dismissed under the guidelines for such an infraction, and it requests that the claim be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find no procedural barrier to our consideration of the merits. We find no indication that the Claimant was deprived of a fair and impartial hearing or that he was inadequately notified of the charges. Hearings involving more than one charged employee are not uncommon in this industry, and we find no reason to question that practice in this instance. We have reviewed the arbitral authority submitted by the Organization on these points, and we do not believe it requires a different conclusion.

Turning to the merits of the case, however, we find that the record lacks sufficient evidence to support the finding of guilt in this matter. There is no question that the switch machine was not wired properly when it was installed on November 17, 2020, and that this was due to faulty plans sent to the field from Signal Design. It was also established that if the proper testing had been performed pursuant to the checklist, the error in the design would have been discovered.

What is lacking is evidence of the Claimant's responsibility for the incident. The record reflects that he performed the wiring according to the plans, and that he would have had no reason to know the plans were defective. The record also reflects that the Claimant's manager was in charge of the testing procedures, and that the Claimant was following the manager's instructions. It is undisputed that the Claimant was in the signal house during the testing and that he would not have been aware of what was occurring in the field at that time or of any issues with the switch itself. The manager, who we are informed was ultimately discharged for his role in the matter, testified that he believed the checklist was followed and everything was done correctly, and we find no reason that the Claimant would have doubted that assessment from his position. While we concur with the Carrier's assertion that proper testing would have discovered the design error, we do not believe the record adequately establishes that the Claimant was responsible for the inadequate testing which was led by his manager. We therefore sustain the claim.

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. 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 10th day of March 2023.