

NATIONAL MEDIATION BOARD
WASHINGTON, DC

SPECIAL BOARD OF ADJUSTMENT 986

NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) – NORTHEAST CORRIDOR (“CARRIER”)

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

NMB Case No. 291
Employee: Otis Clopton, Jr.

Neutral Member: Barbara Zausner
Carrier Member: Richard Palmer
Organization Member: Jed Dodd

STATEMENT OF CLAIM

1. The thirteen day suspension of O. Clopton for alleged violations of NORAC Special Instruction 133-S3 “Foreman Going Off Duty” when, at approximately 2:10 PM in the vicinity of Lane Interlocking while he was assigned Employee in Charge, he failed to ensure that a barricade was properly placed on the out-of-service track after track equipment in his charge cleared Lane Interlocking resulting in a track occupied light (TOL) appearing in the interlocking limits is harsh, unusual and capricious. (System File NEC-BMWE-SD-4883D)

2. As a consequence the 10 days held in abeyance should be eliminated and the Claimant reimbursed for the three day suspension he served.

FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing. The Claimant was not present at the hearing because he was being tested on equipment. He was represented by the Organization.

A Formal Investigation was conducted on January 11, 2010. At that hearing, Robert Schwarz, C&S Supervisor, testified that he learned of the August 19, 2009 incident when he received a telephone call from the New York Trouble Desk informing him that there was a TOL at Lane Interlocking on Number 3 Track. The cause of the TOL was a barricade inside the interlocking limits on Number 3 Track. His Maintainer removed the barricade and cleared the TOL, as far as Schwarz knows.

The Carrier relies on testimony of Thomas Chinski who was contacted about the TOL on 3 Track. He went to the area and found a barricade inside the interlocking. The barricade should have been on the out-of-service track. Chinski did not instruct anybody to put the barricade up nor did he tell anyone where to put it. Octavias Wallace told Chinski that it was he who placed the barricade. Chinski testified that he removed the barricade and moved it into the out-of-service.

Mr. Chinski believes that the Claimant “yanked the barricade down to move all the equipment out.” (Tr., p. 28). The Claimant turned the

track over to Foreman L. A. Watson. Once it was cleared into Watson's name, he was responsible for the "barricade being up or down." (Tr., p. 34). Chinski does not know when the track was transferred from Clopton to Wallace. The foreman who is going off duty is responsible to make sure that the barricades are where they belong.

Gregory Mays was present on August 19, 2009 working as a watchman. He was about 20 feet from the barricade and saw Wallace placing it. He testified that Octavias Wallace "placed the barricade beyond the home signal" and Supervisor Tom Chinski said it was in the right place. The track equipment was already on the move.

Octavias Wallace testified that someone else was told to move the barricade. That person wasn't moving fast enough so Wallace moved it. He said Foreman "Clopton told [him] to take [the barricade] down towards where the guys were working." When he placed the barricade he asked Supervisor Chinski, who was in the area, "Is this good?" and he said, "Yes." (Tr., p. 59). The Claimant was the foreman in charge when he asked that the barricade be put back up.

The Claimant testified that he asked a worker (Leonetti) to replace the barricade. He had other jobs to do so at that time. He agreed that nothing prevented him from putting up the barricade before he finished moving equipment.

The Carrier argues that the Claimant was responsible for the proper placement of the barricade when his equipment clears.

The Organization does not dispute that the Claimant was the employee in charge but his supervisors had directed him to clear the equipment up and it had to be done rapidly. He has to depend on other employees to do their jobs. It points to testimony that Supervisor Chinski confirmed that the barricade was in the proper location and challenges the credibility of Chinski's testimony because he was involved in the incident.

The Board finds that there is sufficient credible evidence in the record to support the charge that the Claimant violated NORAC SI 133-S3. The rule provides in pertinent part,

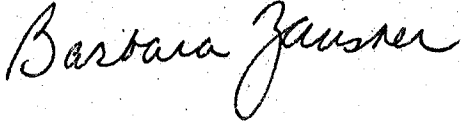
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3. The Foreman addressed must ensure that barricades erected to protect non-shunting equipment or track conditions are repositioned adjacent to non-shunting equipment and/or track requiring protection, and must verify that repositioned barricades shunt properly

The Claimant should have verified the proper erection of barricades. However, he did not check on the location of the barricade until after the TOL was reported. The Claimant's record of discipline includes other rules violations in 2003, 2004 and 2010. On this record the Board concludes that the discipline assessed was not harsh, unusual or capricious.

AWARD

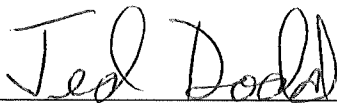
The claim is denied.

Handwritten signature of Barbara Zausner in cursive script.

Barbara Zausner, Neutral Board Member
September 27, 2011

Handwritten signature of Richard F. Palmer in cursive script, followed by a horizontal line.

For the Carrier
Richard F. Palmer, Director – Labor Relations

Handwritten signature of Jed Dodd in cursive script, followed by a horizontal line.

For the Organization
Jed Dodd, General Chairman