

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31772
Docket No. SG-31125
96-3-93-3-155

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad:

Claim on behalf of K.L. Brooks, L. Burnam, B.N. Collins, R.L. Stonecipher, M.S. Anderson and E.A. Bass for compensation for all time lost and removal of discipline from their personal records account Carrier violated the current Signalmen's Agreement, particularly Rule 55, when it failed to provide the Claimants with a fair and impartial hearing, failed to prove its charges against the Claimants during the hearing conducted on March 18, 19 and 20, 1991, and then imposed the arbitrary, harsh and excessive discipline of 30-day suspensions of each Claimant. Carrier's File Nos. 15(92-26, 27, 28, 29, 30, 31). General Chairman's File Nos. 92-208-INV-01, 02, 03, 04, 05, 06. BRS File Case No. 8954-L&N.”

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.

Claimants were assigned as Signal Maintainers at Carrier's Atlanta Terminal, with Mr. Burnam as the Lead Signal Maintainer. This group, plus Signal Maintainer A.Y. Fuller, who was charged with the same violations but elected not to be represented by the Organization (see Third Division Award 31773), comprised the entire signal force assigned to the Atlanta Terminal.

As a result of an FRA inspection on Claimants' territory, the Carrier was cited for multiple violations of the following regulations:

- 236.003 Locking of signal apparatus housings.
- 236.011 Adjustment, repair or replacement of component.
- 236.057 Shunt and fouling switches.
- 236.074 Protection of insulated wire; splice in underground wire.
- 236.076 Tagging of wires and interference of wires or tags with signal apparatus.
- 236.334 Point detector.

The Carrier, in turn, convened an Investigation to determine whether Claimants had any culpability regarding the violations. In addition to responsibility for the aforementioned FRA violations, Claimants were charged with the "possible violation" of Rules 1.223, 1.225 and 1.236 of the Signal Rules & Instructions Manual, which state:

"1.223 Signal housings and key controller boxes will be kept locked.

1.225 Gaskets for housings and junction boxes must be kept in place, in good condition, of proper size, resistant to water, and provide a weatherproof and dustproof seal.

1.226 Relays should be dusted periodically and housing kept clean at all times. At least, once a year a general inspection shall be made of wiring, terminal boards, and soldered connections to see that they are intact and the proper clearance provided."

As a consequence of the Investigation, Claimants were found guilty as charged and each assessed a 30 calendar day suspension. The Organization appealed the discipline, premised upon the Carrier's failure to show adequate proof of Claimants' responsibility for the "alleged discrepancies," maintaining that "many" other employees also had access to the equipment at issue.

Further, according to the Organization, Claimants did not receive a fair Hearing, nor did the Carrier "show a uniform code of discipline," toward other employees in like circumstances. The Organization stated that Claimants should be immediately returned to service, and receive their "just compensation."

Finally, the Organization asserted that Claimant Stonecipher had actually "pointed out an FRA Code 1 violation to the Inspector." Thus, Claimants invoked the immunity from retaliatory discipline provided under of 45 US 441 - Whistle Blower Statute - with regard to Mr. Stonecipher. The Organization went on to assert that the Claimants "only became involved in this dispute due to Mr. Stonecipher's actions, resulting in Carrier's "violation of Claimants' 45 US 441 rights."

In its denial of the claim, the Carrier listed each of the 46 Code 1 Violations and Discrepancies with which it was charged. The Carrier alluded to correspondence received from fellow Signalman/Claimant Fuller in which he stated that the evidence "clearly designates Claimants, as well as himself, responsible for these "rule violations." The Carrier alleged that the Organization's appeal was "nothing more than an attempt to credit someone else, ranging from the Lead Signal Maintainer to unnamed other employees, for responsibility in connection with these violations." The Carrier ascribed the "lenient" discipline Claimants' had received to their service records. The Carrier went on to assert that it should be able to "rely" on employees to perform the task assigned without fear of fines or possible shut-down of its operations as a result of Claimants' failure to correct FRA defects for which they are paid to do." Finally, with respect to the Organization's assertion that the Carrier had violated 45 US 441, the Carrier reiterated that:

"The FRSA only prohibits discrimination against any employee 'because such employee' has filed a complaint, instituted or caused to be instituted any proceeding, or testified in any proceeding under the FRSA. That is the protection is specific to the individual who engages in the protected activity. There is no cause of action under the statute whereby one employee can claim protection because another employee engaged in protected activity."

With respect to the assertion that Claimant Stonecipher "blew the whistle" on the Carrier, there is no probative evidence on this record which convincingly establishes that any of the Claimants alerted the FRA concerning said infractions. Admission to an FRA Inspector of responsibility for the FRA violations turned up in an inspection hardly qualifies as "whistle-blowing." We find no basis upon which any of the Claimants are entitled to the protection of 45 US 441.

The Board is persuaded that the Carrier was justified in disciplining Claimants for their established responsibility for discrepancies revealed in the FRA inspection. It was their dereliction of duties and job responsibilities as Signal Maintainers which constituted the crux of the cited violations. Pleas of mitigation or attempts to pass the blame to others simply are not supported by probative evidence in this record. We cannot find that the Carrier lacked good cause or was unreasonably harsh or discriminatory regarding the discipline assessed. Based upon all the foregoing the claim is denied.

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 20th day of November 1996.