Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35582
Docket No. SG-35587
01-3-99-3-504

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of C. D. Brossette to have a letter of reprimand, removed from his record, and compensated for all lost wages, skill differential and expenses, as a result of an investigation held on January 27, 1998, account Carrier violated the current Signalmen's Agreement, particularly Rule 47, when on February 3, 1998, Carrier imposed discipline against the Claimant without meeting its burden of proving the charges or providing him with a fair and impartial investigation. Carrier's File No. K0698-5075. General Chairman's File No. 986947. BRS File Case No. 11033-KCS."

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 19, 1998, the date of the incident in question here, the Claimant was the Signal Foreman on Gang 820. The gang's assignment that day involved the installation of crossing signals at a grade crossing in Sachse, Texas.

For reasons not relevant here, one of the members of Gang 820, Signalman M. L. Loyd, did not arrive at the crossing job site until about 2:00 P.M.. When Loyd arrived, the Claimant gave him a job briefing and assigned him the task of connecting cables inside a signal bungalow near the crossing. The Claimant did not specifically advise Loyd to be careful not to bump his head on overhanging objects inside the signal bungalow, but he did talk generally about what safety equipment was to be worn and how to safely perform the work. At the time, the Carrier's Rules did not require the wearing of hard hats inside signal bungalows.

Signalman Loyd worked alone inside the signal bungalow, without a hard hat, for more than two hours. The cables he connected were positioned low on the wall of the bungalow and thus required him to work on his knees or in a crouched position. During the course of his work, he rose to a standing position some 10 to 12 times without bumping his head on the overhanging objects. However, as he was in the process of completing his task, he rose to a standing position yet another time and bumped his head on an overhanging train detection unit. The bump resulted in a cut on his forehead.

The Claimant learned of Signalman Loyd's injury upon returning to the crossing job site after talking to his (the Claimant's) Supervisor on the telephone. He then took Loyd to a local hospital, where seven stitches were needed to close the wound.

Subsequently, in a notice dated January 22, 1998, the Claimant was directed by the Carrier to appear for formal Investigation "to ascertain the facts and determine your responsibility, if any, in connection with an incident that occurred . . . on January 19, 1998, at Sachse, Texas, in which Mr. Marty L. Loyd sustained a personal injury while working in Signal Building."

At the Investigation, which was held January 27, 1998, Signalman Loyd testified he was aware of the location of the overhanging train detection unit during the time he worked inside the signal bungalow. When asked by the Hearing Officer whether he felt he would clear the unit as he rose to a standing position and struck his forehead, he responded as follows:

"Yes, ma'am, because I am at arm reach. I am short, I have short arms and I thought I was clear of the unit itself. Normally, I am and I have never struck it before."

The Claimant, during his testimony, acknowledged it was his responsibility to see to it that the work of his gang is performed in a safe and economical way, but he also testified it would probably be impossible in job briefings to cover every specific thing that could happen to gang members during the workday. The Claimant further testified that "As far as watching people, you bump your head all the time," and that he did not specifically mention such incidents in his job briefings because they had not been a problem in the past.

Signal Department Rule 30.1, reading as follows, was introduced into evidence during the Investigation by the Carrier:

"All Foremen.

Foremen are responsible for the proper use, maintenance and security of tools, materials and equipment used to perform their duties. The safety, supervision and training of employees under their charge. Assisting with work when necessary and insuring that work is performed safely, properly and economically and satisfactorily. Submitting time and material reports and other reports as required. Keeping their supervisor informed of plans and activities. While on duty the Foreman must remain with the employees under their charge and as otherwise directed. The Foreman must not perform or authorize any work that will interfere with the safe moving of trains without providing the proper protection."

The Claimant testified he understood this Rule.

After the Investigation, in a letter addressed to the Claimant on February 3, 1998, the Hearing Officer advised it was her decision that the Investigation transcript contained substantial evidence to conclude that the Claimant had violated Rule 30.1, quoted above. Accordingly, the Claimant was advised he was being issued a letter of reprimand that would be placed on his personal record file.

In its Submission appealing the instant claim to the Board, the Organization argues the Claimant was denied a fair and impartial Investigation, as required by the parties' Agreement, because the Notice of Investigation served on him did not specifically cite the Carrier Rule he ultimately was found to have violated. We are not persuaded by this argument. Neither the Claimant nor his representative voiced any uncertainty about either the charge or the Carrier Rule during the Investigation, and the thorough manner in which they presented the Claimant's defense indicates they were familiar with the incident and the issues raised thereby. We are cited to no Agreement between the parties requiring specific Rule violations to be charged in Investigation Notices, and the Rule the Claimant was found to have violated, Rule 30.1, is consonant with a charge questioning his responsibility for Signalman Loyd's injury.

Regarding the merits of the claim, the issue confronting us is whether the record contains substantial evidence supporting the Hearing Officer's conclusion that the Claimant was in violation of Rule 30.1; i.e., that he was responsible, at least in part, for Signalman Loyd's injury. The Organization argues the record lacks such evidence, and the Carrier, of course, makes the contrary argument.

The essence of the Carrier's argument regarding the substantial evidence issue is summarized in its Submission to the Board as follows:

> "The incident did not happen because the foreman was not present or did not have a cellular phone. The incident happened because Mr. Loyd was careless. That carelessness was due in part to the atmosphere the foreman Mr. Brossette himself recognized needed improvement. The fact that he treated 'you bump your head all the time' as a normal part of the workday and needed no special attention shows an absence of concern for those he was responsible to lead and lack of proper attention to safety. The hearing officer had substantial evidence to justify her conclusions. . . ."

We disagree with the Hearing Officer's conclusion and find that the evidence of the Claimant's responsibility for Signalman Loyd's injury is remote, tenuous and speculative at best. Even if the Claimant, in his job briefings or otherwise, had specifically cautioned Loyd to be careful and not bump his head on overhanging objects while working in the signal bungalow, there is nothing in the record to suggest the outcome would have been different than it was. Indeed, as we view the record, just the opposite is suggested because the evidence shows Loyd was fully cognizant of the

overhanging train detection unit as he worked around and under it, and he managed on ten to 12 occasions to safely rise to a standing position without bumping his head on it. Even on the occasion when he rose and struck his head, he was aware of the hazard the train detection unit created because he testified he assumed his short physical stature and his position relative to the unit would give him sufficient clearance. (See companion case Third Division Award 35581 wherein the Board upheld Signalman Loyd's discipline.)

Accordingly, we reject that portion of the Statement of Claim alleging the Claimant was not provided a fair and impartial Investigation, but in all other respects the claim is sustained.

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 24th day of July, 2001.