

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company is violative of Rule 32 of the controlling agreement effective June 1, 1960 and has dealt unjustly with and damaged Electrician Pete Lanfranca at Kansas City, Kansas when they did not afford him a fair and impartial investigation and unwarrantedly assessed discipline of thirty (30) days deferred suspension by letter dated February 13, 1990.

2. That, accordingly, the Missouri Pacific Railroad Company be ordered to reverse in its entirety the discipline of thirty (30) days deferred suspension assessed Mr. Lanfranca by letter dated February 13, 1990, and completely clear Mr. Lanfranca's personal record of this discipline, investigation and all matters related.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The Claimant was employed by the Carrier as an Electrician at its Kansas City Diesel Shop. At approximately 1:30 P.M. on November 30, 1989, the Claimant was working on Unit UP 6002. At about this time, a FRA Inspector observed that the Claimant was working without proper blue flag protection. He called the Carrier's office and informed the Carrier of his observation and indicated that the paper work (report) would follow. Subsequently, the Manager of Mechanical Maintenance questioned the Claimant about the incident.

Under date of December 2, 1989, the Claimant was notified to attend an Investigation, charged with working on Unit UP 6002 without proper blue flag protection. The Investigation was completed on January 26, 1990. Under date of February 13, 1990, the Claimant was notified that his record had been assessed with thirty days deferred suspension. The Claimant had been found guilty of not affording proper blue flag protection on November 30, 1989, in violation of General Rules A and B and Safety Instruction Rules 4000 and 4026.

The Organization argues that the Claimant was not afforded a fair and impartial Hearing because the Hearing Officer could not conduct the Hearing in an objective manner because he was allegedly a witness and also acted in a multiple capacity. We have reviewed the Investigation testimony and find that the Investigation was conducted in an objective manner and that Claimant was given a fair and impartial Hearing. He and his representatives were given every opportunity to question the witnesses that were present and to submit evidence in support of their position. In our opinion it was never conclusively developed that the Hearing Officer was a witness to the conversation between the Claimant and the Manager of Mechanical Maintenance; therefore, we cannot give any weight to this argument. While it is true the Hearing Officer conducted the Hearing and signed the notice of discipline, the Board in numerous Awards, including Second Division Awards 5360, 5855, 6057, and 11995, has held that it is not improper for a Carrier officer to act in a multiple capacity and that such action does not of itself result in a faulty hearing.

The Organization also argues that the Carrier failed to meet the burden of proof in this case because the only evidence produced by the Carrier was hearsay in the form of testimony by the Manager of Mechanical Maintenance who was not an eyewitness and a written report by the FRA Inspector. While the Inspector was not present at the Investigation, a Carrier witness who had a conversation with the Claimant at the time of the incident was present. At the Investigation he stated as follows:

"Well on November 30th, in the afternoon, sometime between 1:30 and 2:00 the office received a phone call from FRA Inspector Walt Tolson informing us that he had observed Mr. Lanfranca working on the unit on track 143, without proper blue flag protection. He told us that at that time the paper work would follow, he would bring it down at a later date. Upon completion of working of train I questioned Mr. Lanfranca and Mr. Clark as to what transpired on the FWNP in track 143. Mr. Lanfranca told me that the west switch was locked but he did not have blue flags on the engine or the flag on the rail. He said that the rear end of the train wasn't locked due to the fact that the track was out of service."

During the Hearing the Claimant was given the opportunity to question the Manager of Mechanical Maintenance but did not challenge his statements as to the conversation that took place between the two of them on November 30.

Rule 4026 BLUE SIGNAL PROTECTION OF WORKMEN contains the following:

"Each manually operated switch, including trailing point crossover switch, providing direct access must be lined against movement to that track, secured by an effective locking device, and a blue signal must be placed at or near each such switch."

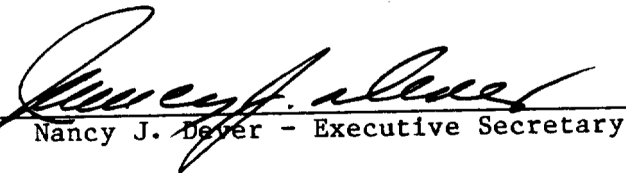
It is our conclusion that the Carrier in this case did meet the burden of proof. The Claimant during the Hearing admitted that he had not placed a blue flag on the west end of Track 143, thus violating Rule 4026. We consider this to be a serious violation of the Rules, therefore, we will not disturb the discipline assessed in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1992.