

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF
AMERICA**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT: This is a resubmission of case covered by Award No. 954 of this Division, which remanded the matter for development of information indicated by that award as a requisite to a proper decision of the controversy. The facts and argument will not be repeated here, reference being made to the full statement in that respect as contained in Award No. 954.

OPINION OF BOARD: The facts, generally, are sufficiently stated in Award 954, where this matter was first considered. There, although the Board emphasized the doubtful propriety of interfering with carrier action "in discipline cases except where the evidence clearly indicates that carrier acted arbitrarily without just cause or in bad faith," not said by the Board to have been established, it remanded the inquiry "for further handling on the property." In doing so, the Board said, that, "If the battery had reached a point where it should have been replaced and controlling instructions were violated, carrier should encounter no difficulty in showing these facts."

We think the supplemental record, if, indeed, the original record did not do so—not negated by the opinion thereon, shows that the battery should have been replaced by the employe involved as the result of his own appraisal of its condition on examinations he made following the two electric lock failures of January 24 and 30, 1938, mentioned in the record, and that failure to do so was violative of controlling and well understood instructions. It is important to observe that the battery consisted of 16 primary cells, series connected. In the interest of "warning" as to the state of the battery, each cell has visual "indication panels," which, when a cell is 85 per cent exhausted, show perforations resembling pin holes, and as exhaustion progresses the waning panels make it increasingly manifest. "These visual indicators," says the manufacturer of the battery, "are a decided advantage in signal service as they enable maintenance forces to see and make sure that ample battery capacity is always available. In this way, signal failures due to exhausted batteries can be averted." The carrier's operating rule 567, with which the employe said he was familiar, reads: "Batteries must be examined frequently and maintained in accordance with special instructions. The jars must be kept clean, bright, and free from creeping salts. Batteries must be renewed in ample time to avoid failure."

The employe testified that when he was called on account of the lock failure of January 24, he "couldn't find anything wrong." That he made readings of the battery at signal No. 17, but that he "didn't take a reading of the lock magnet." He said he examined the battery, and that it "was in fair shape I judged it would go some thirty to 45 days or longer." He further testified that he "was called back * * * again on the morning of January 30, account of this same lock failing," and that upon making inspection he found "the battery was in the same condition it was on the evening of the 24th." He was asked whether he inspected "each cell of battery on your second investigation of failures on lock No. 11," and he answered, "No I never examined each cell separately, I read the voltage of the battery, which was sufficient to operate lock." He said he inspected the indication panels of all the cells of the battery at that time, and that there were "holes in the indication panels and some had holes in the plates." "Q. Was the majority of the indication panels gone? A. I judge from 50 to 60%." February 11, 1938, a Signal Inspector, superior in authority, and the employe made an inspection at the scene of the trouble. The Inspector found the panels in one cell completely gone, and determined that to the exhausted condition of the battery the failures were attributable. He found no other defects that would interfere with the proper operation of the lock that had failed, nor did the employe at that or any other examination discover any such defect. As the result of none of his examinations did the employe report the condition of the battery. The Inspector "cut out" the dead cell, and instructed the employe to renew the battery at the first opportunity, to accomplish which there was ample time prior to the employe's suspension. He had taken no steps to that end.

That the life of a battery is uncertain is recognized by all concerned, and when it will cease to function is not nicely predictable. The manufacturer here provided that which was calculated measurably to indicate the progress of battery exhaustion; but neither the device thus supplied, nor any other, so far as we are advised, will enable the most capable of maintainers to fix with exactitude the time of the inevitable failure of a given battery. Indeed, the sum of the manufacturer's claim is that its "indicator" enables the maintainer to form his estimate of the strength of the battery on something more dependable than conjecture or even experience. In this instance the carrier's rule only required of the maintainer that he renew the battery "in ample time to avoid failure." The injunction under which the employe operated was that he must be awake to assured service on the part of the battery, not that he test it for durability.

Considering the failure of the lock to operate on the occasions appearing, the examinations made by the employe and his superior, neither of whom found defects otherwise, as we have seen, the questionable condition of the battery, stating the situation most favorably to the employe, the operating rule requiring renewal of the battery in ample time to avoid failure, the superior's direct order to renew it and the employe's disregard thereof, we cannot think that in administering temperate discipline the carrier acted arbitrarily, without just cause or in bad faith. The fact that following the elimination of the fully spent cell the battery did not fail to function in the course of several days is not proof, the demands of the service considered, that dependence thereon was other than speculative.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein;

That neither party requested a hearing on this resubmission and none was held; and

That in its disciplinary order the carrier did not transgress the proprieties of its authority.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of July, 1940.