

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: That H. H. Snyder, signal maintainer, (a) be exonerated of alleged violation of Rule 1332, Carrier's operating rules; (b) be restored to position of signal maintainer at Phillipsburg, New Jersey; (c) be compensated for all earnings lost account of wrongful assignment to position in signal crew; (d) be paid for all time traveling to and from Phillipsburg, New Jersey, outside of assigned hours while wrongfully assigned to position in signal crew.

EMPLOYEES' STATEMENT OF FACTS: Mr. H. H. Snyder has been a signal maintainer for this carrier since 1918 and was assigned to position of signal maintainer at Phillipsburg, New Jersey from February 1940 until removed from that position June 28, 1942. His qualifications for the position of signal maintainer at Phillipsburg or elsewhere have not been questioned at any time.

An act to require certain common carriers by railroad to install and maintain certain appliances, methods and systems intended to promote the safety of employes and travelers on railroads, and for other purposes, was passed by the 75th Congress and approved August 26, 1937. This is known as the Signal Inspection Act.

In keeping with provisions of the Signal Inspection Act, the Interstate Commerce Commission, through its Bureau of Safety, promulgated certain rules, standards and instructions for installation, inspection, maintenance and repair of block signal systems, interlocking and related appliances. These rules, standards and instructions were effective September 1, 1939 and set forth in some detail minimum requirements. They provide that the railroad company is responsible for the signal devices and must know that they are maintained in condition to meet the requirements of the law and the rules.

Following repeated efforts to secure repairs and assistance in making repairs, Mr. Snyder wrote the Signal Supervisor on June 24, 1942, pointing out a number of signal devices requiring immediate attention and repair and disclaiming responsibility for failures of the named and listed devices. For this he was removed from his position of signal maintainer at Phillipsburg.

Mr. Snyder has been repeatedly called outside of assigned hours to perform service on the Phillipsburg territory since he was removed from that position on June 28, 1942.

While Mr. Snyder was held away from his position at Phillipsburg, his successor, in the course of filling the position, was called upon occasionally to perform service outside of regular assigned hours. Such service would have accrued to Mr. Snyder had he remained on the position.

With Mr. Snyder's letter of June 24th before us, we could not continue him in the position without an understanding as to what he intended by his statement in that letter that he would not be responsible for trouble on his section, and this was the reason for the investigation.

In the discussion, it was not possible to convince Mr. Snyder that he had a very definite responsibility for the maintenance of the equipment on his section, although he admitted his knowledge of the rules governing signal maintainers, and particularly Rule 1332 covering his responsibility for the maintenance of the apparatus assigned to him. Particular attention is called to his opinion of the limited requirements of Rule 1332, his statement being:

"If I hooked up anything wrong or replaced anything wrong at any of the signal apparatus that I maintain, then I would feel that Rule 1332 would enter into the picture."

It was our conclusion that we could not safely continue Mr. Snyder in the position of signal maintainer, where generally he worked alone and was necessarily entirely responsible for the maintenance of his section, but, believing he might perform work satisfactorily under the direct charge of a foreman, who could closely supervise his work, we transferred him from signal maintainer on the Phillipsburg section to the construction and maintenance force working at that time at Bethlehem.

In discussing this case on appeal with the General Committee, it was stated that there was difficulty in getting material for the full and complete maintenance of signals, and it was agreed, on account of wartime conditions, we were not able to get all the material we would like to have, or as promptly as we should have it; but, all this was taken into account when we had signal failures, and signal maintainers are never held responsible for anything they cannot control. At the same time, we submit, and we believe the Board will agree with us, that on so important a matter as signal maintenance, we cannot continue in that capacity a signal maintainer whose opinion of his responsibility for his work is such as indicated by Mr. Snyder's letter and the statements made at the investigations.

In the appeal by the General Committee, at which Mr. Snyder was present, the undersigned endeavored to make clear to Mr. Snyder his responsibility in the position of signal maintainer, but had no more success than at the original investigation. However, after due consideration and conference with the supervisory force, we decided that this experience would be a lesson to Mr. Snyder and that if he would withdraw his letter disclaiming responsibility for the work of his section and give us his assurance that he would undertake to render satisfactory service in the future, we would restore him to the position from which he was transferred. This was not accepted, and Mr. Snyder continues as a signalman in the construction and maintenance force. The rate of pay of signalman in construction and maintenance force is the same as for signal maintainer, and Mr. Snyder was paid in accordance with the rules of the agreement covering the position to which he was assigned.

OPINION OF BOARD: The Claimant by exercise of his seniority rights was awarded the position of signal maintainer on a signal section with headquarters at Phillipsburg, N. J. He had been operating on that division for two years and a half when on June 28, 1942, he was removed against his wishes and transferred to the position of signalman in a gang. The rates of pay in the two positions were the same. On June 14, 1943, he bid on and was assigned to the position of testman at Easton, Pennsylvania, which was a position of higher rate than either of former ones. On June 24, 1942, he wrote a letter to T. P. Heitzman, Supervisor of Signals, which opened as follows:

"List of signal appliances on the Phillipsburg territory that I will not be responsible for trouble on."

Then followed a list of the apparatus.

The Carrier claimed that this letter constituted a refusal by Snyder to abide by Rule 1332 of the Operating Rules of the Carrier. This rule reads as follows:

"They are responsible for the inspections, tests, adjustments and proper maintenance of all apparatus assigned to their care in accordance with current Rules, Standards and Instructions for Installation, Inspection Maintenance and Repair of Automatic Signal, Interlocking, Automatic Train Stop, Automatic Cab Signal and Other Similar Systems. They will also be responsible for the care of their supply houses and contents and must not permit unauthorized persons to frequent them."

He was removed from this position on June 28th and summoned for two hearings, first on June 30th before Mr. Heitzman, again before C. W. Baker, Division Engineer. He was told by Mr. Heitzman that this letter constituted a refusal to abide by the rule. He denied that such was the proper interpretation of his letter, and stated that he had no intention of violating Rule 1332. He said that all he meant to imply was that he would not be responsible for "the trouble on the apparatus." He was not asked to explain farther what he meant. The examination before Mr. Baker was substantially to the same effect. On being asked why his letter did not show a purpose on his part not to abide by Rule 1332, he said:

"If I hooked up anything wrong or replaced anything wrong at any of the signal apparatus that I maintain then I would feel that Rule No. 1332 would enter into the picture."

This seems to be analogous to a case of discipline. At least it has been argued by the Carrier on the theory that he was properly removed from his position because he had stated that he would not abide by the rule. And the only question before the Board is whether the Carrier was justified in taking the action which it did.

The letter read in the light of the statements of Mr. Snyder does not, it seems to us, warrant the interpretation which the Carrier has placed on it. The letter was inept but it seems to us that the employe was trying to tell his superiors that there was certain apparatus which he regarded as so structurally defective that he did not feel he should be held responsible for trouble on it. There seems to have been a good deal of beating about the bush at the examinations, and an obvious reluctance on the part of the Carrier to draw out the employe as to just what he meant. It certainly was to the Carrier's interest and in the interest of the general public to find out instead of assuming that there was nothing more to his letter than a point blank refusal to assume the responsibility which the rule imposed. The letter shows no intention on the part of this employe to deny the responsibility assumed by him under the provisions of Rule 1332 for the maintenance of the signal apparatus.

We regard the interpretation put on the letter by the Carrier as unwarranted, and as such interpretation was the sole basis for the action taken, the employe must be exonerated from any violation of Rule 1332. Claim (b) should be sustained with the qualification limiting its operation to June 14, 1943.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and 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; and

That the Carrier has violated the Agreement.

AWARD

Claim (a) sustained.

Claim (b) sustained to the extent that the employe be regarded as restored to his position from June 28, 1942, to June 14, 1943, the date when he was assigned to his present position.

Claim (c) sustained.

Claim (d) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.