

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the dismissal of Crossing Flagman Roscoe Neaveill, Rock Island Division, on March 22, 1946, was improper and unwarranted:

(2) That Roscoe Neaveill shall be reinstated to the position of crossing flagman at Rock Island Island, Illinois, with seniority rights unimpaired and paid for lost time.

OPINION OF BOARD: Claimant, Neaveill, was employed by Carrier as a crossing flagman on August 21, 1945. He was discharged for failure to properly operate crossing gates on March 22, 1946. Claimant was given a hearing as required by Rule 17 of the Agreement. The question presented is whether the facts justify the dismissal.

This Board has repeatedly held that where the Carrier has not acted arbitrarily, without just cause or in bad faith, the judgment of the Board as to propriety of dismissals will not be substituted for that of the Carrier.

That there was a failure to lower the gates with the passing of Train No. 14 is undisputed. However, Claimant contends that the failure was due to the fault of certain mechanical signals which were for the purpose of warning the flagman of approaching trains. Carrier contends that even conceding the mechanical signals were not working properly, this fact was known to him and since Train No. 14 was a regular train Claimant should have been alert in watching for this train and had the gates down. No purpose would be served in stating the facts upon which these contentions are based. We have carefully considered the entire record and after such consideration we are unable to say that the Carrier acted either arbitrarily, without just cause or in bad faith. We cannot substitute our judgment for that of the Carrier.

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 Employee involved in this dispute are respectively carrier and employee 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 not acted arbitrarily, without just cause or in bad faith.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1947.