

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORFOLK AND WESTERN RAILWAY COMPANY

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

(1) That the thirty (30) day record suspensions entered upon the Carrier's records against Section Foremen R. C. Overstreet, William McKinney, and C. M. Tinsley, Jr., as a result of their motor cars being struck by Extra 2125, East, on middle track at Lowry, March 17, 1947, was applied unfairly, inconsistently, and in a discriminatory manner;

(2) That the thirty (30) day record suspensions be removed from the records of those employees mentioned in part 1 of this claim, by reason of this unfair treatment upon the part of the Carrier.

OPINION OF BOARD: Claimants were charged with violation of Rules 692 and 693. The record discloses admissions by Claimants which make it clear that these rules were violated in part at least. Rule 693, in part, is as follows:

*"693. Motor cars must not be operated within the limits of interlockings without conferring with the leverman and having an understanding with him that the movement to be made is protected. * * *"*

The testimony of the Claimants shows that they did not confer with the leverman controlling the switches to the track they had blocked with their motor cars. Because the leverman did not have this knowledge an extra was routed over the track; the automatic signal governing the track showed it to be clear and the accident resulted. Claimants contend that it had been the usual practice for section foremen to enter an interlocking plant with their motor cars without conferring with the leverman. While the Carrier denies that this is true it suffices to say that prior violations of rules do not nullify the rules, at least without a strong showing that the Carrier had known of the prior violations and had condoned such.

This Board has often held that it will not substitute its judgment for that of the Carrier in discipline matters unless there is clear evidence of an abuse of discretion by the Carrier. (See Third Division Awards 419, 891, 1996, 2498, 2632, 2863, 3203, 3683, 3985 and 4068.) The Record does not disclose that the thirty-day record suspensions were applied unfairly, inconsistently or in a discriminatory manner.

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

That the parties waived oral hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 Record sustains the action taken by the Carrier.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1949.