

Award No. 4747

Docket No. SG-4765

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY
GULF COAST LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the International-Great Northern Railroad Company-Gulf Coast Lines that:

(a) Mr. J. F. Aust be reinstated to his former position of Signalman with seniority, vacation, and all other rights and privileges restored.

(b) Claim that Aust be paid for all wage loss sustained by him since his dismissal from Carrier service account his alleged responsibility in connection with a motor car accident near Mile Post 121, Trinity Subdivision on October 11, 1948.

EMPLOYEES STATEMENT OF FACTS: The claimant, J. F. Aust, acquired his position as Signalman at Spring, Texas, by virtue of his seniority with this Carrier amounting to approximately three years. Aust had previous railroad experience amounting to approximately twenty years on the Southern Pacific Company. He successfully and faithfully fulfilled his duties on both properties until he was dismissed from the services of this Carrier by Mr. F. H. Cook, Superintendent, located at Palestine, Texas, by letter dated October 19, 1948.

Aust was held responsible for motor car in his charge being struck by Train 132, Engine 1156, about 11:45 a.m. on October 11, 1948, because of an alleged violation of M. of W. & S. Rule 114(a). This rule is quoted herewith for ready reference:

"In the operation of cars, foremen and others must move at all times with care and caution necessary for safety, expecting trains at any time without notice and protecting when necessary, using prescribed signals. Care must be exercised to avoid collision with trains and other cars. Alertness and full use of eyes and ears are important."

The position of signalman occupied by the claimant is on a regular maintenance territory, and in performing his duties on his territory (M.P. 120 to M.P. 146) it is necessary that he operate and handle a motor car by himself. He was unaccompanied at the time of the accident.

The motor car he was in charge of weighed more than 500 pounds, including tools and equipment on the motor car. At the time of the accident the following tools and equipment were on the motor car:

"Railroad management must accept full responsibility for the employment of its employees, and it follows that it should be allowed a reasonable amount of discretion in deciding the competency and ability of its employees. So long as the carrier management acts in good faith and without ulterior motives, and does not abuse the right and privileges of the employees under the contracts and rules and regulations existing between the employer and employee, this Board is without the right to interfere in the action of the employer in disciplining its employees."

The following is also quoted from "Opinion of Board" in Award 135:

"Although this Board has the power to order the reinstatement of an employee, it should be very cautious in the exercise of the power. It should not exercise it unless the evidence clearly indicates that the employer has acted arbitrarily, without just cause, or in bad faith."

In Award 3965 your Board made reference to and recognized the above quoted opinions expressed in Awards 71 and 135 and on the same basis declined to interfere with the discipline administered.

Certainly it cannot properly be contended, in light of the foregoing record, that the Carrier in dismissing Mr. Aust from service acted capriciously or arbitrarily. The record in evidence, Carrier's Exhibit "A" conclusively shows that Mr. Aust was guilty of the rules violations for which he was dismissed. Therefore, the request of the Employees that Mr. Aust be reinstated to service with seniority rights unimpaired, and that he be paid for all wages loss sustained by him since his dismissal from service is without basis for justification and accordingly their request should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant held a position of signalman on a regular maintenance territory. In the performance of his duties it was necessary that he operate and handle a motor car by himself. On October 11, 1948, about 11:45 A.M., his motor car was struck by the engine on Train 132. The Carrier contends the accident was the result of negligence on the part of the Claimant and his failure to comply with Rule 144(a), which provides:

"In the operation of cars, foremen and others must move at all times with care and caution necessary for safety, expecting trains at any time without notice and protecting when necessary, using prescribed signals. Care must be exercised to avoid collision with trains or other cars. Alertness and full use of eyes and ears are important."

The record shows that Claimant heard through H. Diehl, Signal Supervisor, that an investigation was to be held to develop the facts and place responsibility for the accident. Claimant attended the investigation, accompanied by his representative, R. F. Jones, Local Chairman. [The purpose of the investigation was stated as follows: "This investigation is called to develop the facts and place responsibility account motor car in charge of J. F. Aust being struck by Train No. 132, Engine 1156, Mile Post 121, Pole 16, Trinity Subdivision, about 11:45 A.M., October 11, 1948." No written notice of any kind was served on Claimant nor was he in any manner apprised that he was charged with a violation of rules.] Claimant was the only witness interrogated. Nowhere in the record of this interrogation is there an indication that it was being held to determine if discipline should or should not be assessed against him. [Following the hearing, Claimant was dismissed from the service of the Carrier.]

The applicable portions of the Discipline Rule contained in the controlling Agreement provide:

"(a) An employe who has been in the service more than thirty (30) days or whose application has been formally approved, shall not be disciplined or dismissed from the service without first being given an investigation.

"(b) Prior to the investigation he shall be apprised in writing of the charges sufficiently in advance of the time set for investigation to permit of his having reasonable opportunity to secure the presence of necessary witnesses.***

"(f) If the discipline assessed against the employe is not sustained on the appeal, the record shall be cleared thereof, and if suspended or dismissed he will be returned to his former position and compensated for the actual wage loss, if any, suffered by him."

(Rule 14, current Agreement)

It will be observed that the provisions of Sections (a) and (b) of Rule 14 were completely ignored by the Carrier. This Board has said many times that the seniority rights of employes to positions under collective agreements are valuable property rights. The Agreement provides the method by which they may be terminated or restricted as a matter of discipline. The method pursued by the Carrier in this case is wholly ineffective to sustain the assessment of discipline. Claimant was not advised before or at the hearing that he was on trial. The most casual examination of the controlling Agreement would have disclosed the procedure to be followed. We feel obliged to point out again, as we have before, that agreements are made to be kept and when, as here, the rights of an employe are prejudiced by their violation, it is the function of this Board to award the relief required. An affirmative award is required, irrespective of the merits of the case.

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 Agreement was violated.

AWARD

Claimant reinstated to former position with all rights reserved. Claimant to be compensated for his actual wage loss, if any, suffered by him.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1950.