

**Award No. 5671**

**Docket No. SG-5660**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Hubert Wyckoff, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Baltimore and Ohio Railroad that:

(a) Mr. Donald F. Leach be reinstated to his former position of Signal Maintainer at Leesburg, Ohio, with seniority, vacation, and all other rights and privileges restored.

(b) Signal Maintainer Leach 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 three miles west of Greenfield, Ohio, on the Ohio Division, on July 6, 1949.

**OPINION OF BOARD:** This is a discharge case growing out of a collision between a track car in charge of Claimant and a train.

In compliance with Carrier's Operating Rule 131 Claimant secured a lineup on Form 1089 D from the telegraph operator at Leesburg for the movement of his track car on main track from Leesburg east through East Monroe to Greenfield. It is 2.2 miles from Leesburg to East Monroe and 6.6 miles from East Monroe to Greenfield. The lineup was issued at 1:18 P.M. and expired at 2:30 P.M.

There were open telegraph offices at both Leesburg and Greenfield. There were telephones but no telegraph office at East Monroe, one at East End Siding and one at West End Siding.

Claimant left Leesburg at 1:21 P.M. with the lineup showing one train following him and two trains against him. The lineup did not show where these trains were to meet; and in the absence of this information, the lineup did not entitle Claimant to proceed east of East Monroe. He did so proceed, however, upon the basis of information secured by telephone at 1:30 P.M. at East Monroe from the telegraph operator at Greenfield.

The track car collided with one of the opposing trains at 1:40 P.M. about half way between East Monroe and Greenfield.

The Carrier based the dismissal entirely upon the Rule and upon the conclusion that Claimant should have secured a new Form 1089 D at East Monroe; that it was a violation of Rule 131 to call a telegraph office from

East Monroe after receiving a Form 1089 D at Leesburg and then to move a track car on the information so received by telephone; and that to rely on the telephonic information was to disregard the lineup and hence to violate Rule 131.

**FIRST.** The Rule did not require Claimant to secure a new Form 1089 D at East Monroe. He had a valid unexpired lineup limited at Greenfield, not at East Monroe. The Rule did not require a new Form 1089 D at East Monroe, because his Form 1089 D had not expired and because there were no telegraph offices between Leesburg and Greenfield. Even if there had been open telegraph offices between Leesburg and Greenfield, the Rule would not have required a new Form 1089 D at each telegraph office within the limits shown on the form, if sufficient time remained before the lineup expired.

**SECOND.** The Rule expressly contemplates the use of the telephone.

When communication is available, as it was at the East Monroe Sidings, the track car operator is required to "report promptly when the car is clear of the main track" and to "notify the telegraph operator before again occupying the main track." When Claimant communicated from the East Monroe Siding, he was obviously on the main track, only 7 minutes out of Leesburg with a Form 1089 D to Greenfield; and no one has suggested that he was reporting his car clear of the main track at East Monroe.

The Rule also specifically contemplates the receipt of the Form 1089 D itself by telephone, for it says:

"When the Track Car Operator receives Form 1089 D by telephone he must repeat the information to the Telegraph Operator."

While the Rule categorically requires that track cars be clear of the main track 5 minutes before regular trains are due, track car operators are simply required "to use good judgment" as to other trains shown on the lineup. Claimant did not use the telephone in order to contradict the lineup; he called to secure additional information which the lineup did not disclose, namely, where the opposing trains were to meet. Since the Rule authorizes receipt of a Form 1089 D itself by telephone, it would be bad judgment to refrain from telephoning in the circumstances presented here.

**THIRD.** The record discloses one prior track car collision in 1947 for which Claimant was disciplined. This fact was not brought out at the investigation and hearing; nor was a charge of chronic carelessness made or sought to be proved. Claimant therefore had no opportunity to meet this evidence at the hearing. In these circumstances, the prior collision has no relevance to the issue whether Claimant violated the rule on the date charged here (see Awards 562, 775, 1294), although the prior collision would be of course relevant to the amount of penalty to be assessed.

For all of the foregoing reasons, it was unreasonable and an abuse of discretion for the Carrier to conclude that Rule 131 was violated.

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

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 29th day of February, 1952.