Award No. 9752
Docket No. SG-9480

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:
BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company:

a. That Signal Maintainer J. J. Daily was unjustly treated, under the circumstances revealed at the investigation, when he was suspended from service for thirty (30) days, from January 6, 1956, to February 6, 1956, for alleged violation of this Carrier's Rule 142, Rules and Regulations for Maintenance of Way and Structures.

b. That the Carrier violated the current Signalmen's Agreement when it failed to furnish Signal Maintainer J. J. Daily with a copy of the transcript of the investigation as required by Rule 64 (c).

c. That Signal Maintainer J. J. Daily be paid for all time lost.

OPINION OF BOARD: Claim is progressed here, and the Organization contends that Carrier unjustly treated the employe when it assessed a penalty of thirty days suspension following Investigation and Hearing as shown by the record, for an occurrence on December 29, 1955, when a motor car operated by Claimant was struck by Train Extra No. 1299. It is further contended that Carrier failed to furnish Claimant copy of transcript of proceedings as required by Rule 64 (c).

We will dispose of the last contention, by stating that according to the record Carrier did furnish such transcript of proceedings within the provision of Rule 64 (c) of the Agreement between the parties. The rule does not set a time limit on which Carrier must furnish such transcript. Nothing in the record supports the contention of Claimant that Carrier violated the agreement. To the contrary Claimant was furnished such transcript by Carrier, and the rights of the employe were in no way affected here. Nor did Carrier in any way violate the provision of Rule 64 (c) as alleged.

There is also a contention made that Carrier refused to permit testimony of R. L. Pilger, Supervisor, on behalf of the Claimant. The record shows that such testimony as would have been adduced by this witness would have not been of aid or assistance to Claimant nor would such testimony have been applicable to facts in support of the charges which Carrier had preferred against Claimant. Such allegation by the Organization is not supported by the record.

Briefly the facts show Claimant was employed as a Signal Maintainer by Carrier with headquarters at Cedar Rapids, Iowa. On December 29, 1955 the employe was called after his regular assigned hours to investigate signal trouble at Linn, Iowa, some three and a half miles from Cedar Rapids, and in his usual assigned district; at about 7:25 P.M. Signal 1024 was showing red, and he was advised by the Relay Office, on request of the Dispatcher, to make necessary repairs. The weather was near zero, and on account of the cold, he had some difficulty in getting his motor car to operate properly, but he did first go to the yard office and later having clearance to the Relay Office, went there and received a line up on trains reported on the trackage where he would be working. Some delay was caused to the employe to get a motor car which would operate and it was about 8:45 P.M. before he obtained a car from the section foreman. He proceeded to Signal 1024, made temporary repairs, after setting his motor car off on Sub Division 16A. The Organization contends the Claimant was given a line up of all trains that were within the knowledge of Relay Office, which might be operating in the territory where Claimant was working, with the time of arrival of such trains. It is alleged Claimant was assured by the Relay Operator no other trains would operate until No. 61 after midnight.

After completing the work on Signal 1024, before returning to Cedar Rapids, he checked the signal indicator at the east end of the passing track and received a clear signal. He then attempted to start his motor car, and had to push it on the track to get it to operate. It is shown by the record that in addition to the signal indicator, there was a telephone by which he could have called the operator at Cedar Rapids to determine if there were any trains not on this line up which might be approaching him. However, relying on his line up and that he had been told by the Relay Operator that no further trains would operate until after midnight, he made no effort to use the telephone further and proceeded toward Cedar Rapids. Shortly after starting his motor and going into a curve he noticed the headlight of an approaching train. He says he braked his motor car, released his brakes, and ran toward the approaching train, after giving a stop signal. The record shows the motor car was struck by the engine at about 10:45 or 10:50 P.M. The train involved here was Extra 1299 west, and was not included on the line up furnished claimant. Had he used the telephone he would have been advised of the approach of Extra No. 1299 W.

From the facts of record, we cannot say that Carrier has acted in an arbitrary or capricious manner toward this employe. Considering weather conditions, travel on curves, etc., as occurred here, Claimant had an opportunity to call the Relay Office by telephone to inquire if any trains might be approaching him as here, but he admits no effort was made to avail himself of the telephone. We don't believe the Claimant properly complied with the provisions of Rule 142, Rules and Regulations for Maintenance of Way and Structures, promulgated by Carrier, for his own safety, and to properly take precautions to avoid an accident.

The Organization makes some contention, that the penalty of thirty days suspension placed on the employe was unreasonable and harsh in view of other cases of similar assessment of suspensions in discipline cases. The record makes no comparison of other cases, and we must accept the judgment of Carrier, where such allegations are unsupported by the record.

From all the facts and circumstances shown here, we are of the Opinion that the record here is not sufficient to support a sustaining award, nor is there proof that Carrier violated the provisions of the Agreement or acted in an arbitrary or capricious manner toward the Claimant.

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 did not violate the Agreement between the parties.

AWARD

Claim denied as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 16th day of December, 1960.

DISSENT TO AWARD 9752, DOCKET SG-9480

The majority, consisting of the Referee and the Carrier Members, being in a position to look at the situation after the accident happened, understandably can theorize as to how it might have been avoided. Presumably, having concluded that Carrier must be upheld, it is likewise understandable that so little mention is made of the precautions taken by Claimant before leaving Cedar Rapids to assure against the very thing that happened, i.e., the possible appearance of trains other than those on his line-up. The majority was well aware that Carrier did not attempt to challenge either the authenticity or the adequacy of the line-up under which Claimant was operating his motor car.

The majority find that Claimant failed to properly comply with Carrier's Rule 142 when he did not call the Relay Office by telephone to inquire if any trains might be approaching. The majority was aware that the Carrier did not charge Claimant with operating his motor car without adequate information on trains. The truth of the matter is, despite the fact that Rule 64(a) clearly requires that an employe subject to discipline will be given at least seventy-two hours written notice of the exact charge or charges against him, Claimant was never charged with anything. He was subjected to investigation—

> "to discover cause and determine your responsibility, if any, for violation of Rules 127 and 142 of Rules and Instructions for Mtce. of Way & Structures in connection with motor car accident at or near Linn, Iowa, at 10:50 P.M., December 29, 1955. * * * "

The notice of discipline simply informed Claimant that because he had failed to comply with Rule 142 of Rules and Instructions for Maintenance of Way and Structures he was suspended until February 6, 1956.

In the face of such obscurity on the part of Carrier it is unfortunate that the majority felt called upon to manufacture grounds upon which to sustain the assessment of discipline. This act on the part of the majority becomes even more distasteful upon recalling that Carrier finally asserted, in its statement presented at hearing, that Claimant violated Rule 142 in that he failed to protect himself with proper signals. The train Claimant allegedly failed to protect against with proper signals was one not on his line-up, one he had been specifically and authoritatively told he need not expect until after midnight.

Award 9752 does not deal with the issue on the basis of the facts contained in the record. Therefore, I dissent.

/s/ G. Orndorff

Labor Member