

Award No. 10001

Docket No. SG-12109

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Carrier's action in dismissing Mr. I. C. Huyett from the service was arbitrary, capricious, unjust, and in violation of the Signalmen's Agreement, particularly Article VI, Section 1.

(b) The Carrier now compensate Mr. I. C. Huyett for the time involved and all expenses incurred in connection with attending investigation held on April 13, 1959, at Shopton, Iowa.

(c) The name and seniority of Mr. I. C. Huyett be restored on the Eastern Division seniority roster unimpaired, with his vacation and all other rights and privileges restored.

(d) Mr. Huyett be compensated for all time lost as a result of the Carrier's improper dismissal. [Carrier's File: 132-55-1.]

OPINION OF BOARD: The Claimant was employed as a signalman for the Carrier on November 6, 1956 when a fellow employe, L. D. Van Sickle, was injured while making repairs on a high tension electric signal pole line. Two years later the Claimant testified in a personal injury action brought by Mr. Van Sickle against the Carrier. In this action a verdict was returned in favor of the Plaintiff.

Four months later the Carrier notified the Claimant to appear for a formal investigation alleging rules violations because of his testimony at the trial. As a result of this investigation the Claimant was dismissed from

service. He was subsequently recalled to work on another Division of the Carrier. The Organization processed this case through the various appeal steps established by the Agreement and the claim was denied at all steps. The dispute was then brought to this Board.

A careful examination of the record in this case disclosed that there were material differences in the testimony of the Claimant in the Van Sickle case and in the investigation on the premises as compared to the statements which the Claimant gave to the Carrier immediately after the accident.

During the trial the Claimant testified that there had never been any safety meetings prior to the accident when he stated:

"Mr. DeParcq:

Q. All right. Prior to this accident, during the month that you worked out there, did you have safety meetings every Monday Morning?

A. As I can recall we never had one safety meeting before the accident, and after that they just went wild, we had them all day long."

At the investigation on the property, the Claimant stated that there were "bull sessions" on some Monday mornings but that they did not measure up to what he considered a safety meeting.

During the trial the Claimant testified that the foreman had not notified Mr. Van Sickle which wires were hot and which ones were dead. However in statements made to the Company on November 12th and November 20th, 1956 the Claimant made a report to the Company concerning the accident.

In his November 12th hand written letter he stated in part:

"The foreman told Van Sickle to climb up and put the ground chain on the line about a foot west of the crossarm and to tie the chain so it wouldn't come off or hang down in the secondary wires. He told Van Sickle that the line east of the cut would be hot and that the line west of the cut would be dead, and that we were grounding the line to keep out static. . . ."

In a report made to J. E. Wilson on November 20th which was type-written but initialled and corrected by the Claimant he stated:

"The foreman told L. D. Van Sickle to climb up and put the ground chain on the line about a foot west of the crossarm and to tie the chain so it wouldn't come off or hang down in the secondary wires. He told Van Sickle that the line east of the cut would be hot and that the line west of the cut would be dead, and that we were grounding the line to keep out static. The foreman then sent me to clean old scrap wire and he took Van Sickle, Daniels and Franklin to lay the power wires over from the old poles to the new ones going west. I saw them several times throughout the morning working around the new H fixture at the sub station. I know that Van Sickle put the

ground chain on the line, because I threw it up to him, and as stated heard the foreman point out to where the wires was cut and said not to go past the ground chain pointing to the east and said not to go back there and said that it was all dead the other direction, that is west of the cut. I did not hear the foreman tell 'Noodles', Van Sickle, to go untie the wires, but 'Noodles' told me himself he was going to go untie them and take up slack in the line, but I did not watch to see where he went, but I do know he had told 'Noodles' previously, not to go back of the blocks, or where the wires were cut. Van Sickle had climbed poles before, and Van Sickle told me he had climbed poles on the Middle Division and he has been since I have been working on the Illinois Division. For the last month we have been changing out hi-line crossarms and he has been helping with the work, in fact him and I have been climbing the same poles, but I was not climbing that day, Nov. 6. I do not know why Van Sickle was back where the wires were hot, suppose he was just not thinking about what he was doing."

The Claimant also admitted during the investigation that he had accompanied Mr. Van Sickle, and his attorney, among others into company property when they did not have authorization.

The facts as admitted at the investigation also show that the Claimant was shown his statement of November 20th a month before the Van Sickle trial and that he did not at that time raise any objection to the statement but in fact told the Carrier the statement was as he remembered the facts.

While the Claimant may have been confused during the course of the trial as many persons do become, it is still this referee's judgment that all of the things stated during the trial did not arise from confusion. This referee can understand that, in the mind of the Claimant, the alleged safety meetings held prior to the accident were informal affairs and that they did not in fact conform to what he considered safety meetings. Other aspects of his testimony at the trial are of a much more serious nature. It is not the function of this Board to weigh controverted facts and our duty is to determine whether the charge as established on the property was sustained. However, in this case, the Claimant's own statements made to the Carrier stands forth as the strongest witnesses against him. Whenever an employe is injured and the Carrier is faced with potential civil liability, it must attempt to determine the facts and has a right to expect that its own employes will tell them the truth to the best of their knowledge and ability. In light of the record this referee feels the Carrier was not arbitrary and capricious in the action it took (see First Division Award 16785), nor were the Claimant's rights prejudiced by the fact that four months elapsed from the time of the trial and the investigation.

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;

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

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That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July, 1961.