

Award No. 10089

Docket No. SG-12086

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company that:

(a) The action taken by the Carrier in dismissing Signal Maintainer W. E. Hauff on July 11, 1959, from the service of the Carrier, following an investigation held on July 2, 1959, in connection with the derailment of Train 290 at Kensington Interlocking switch No. 107 at 10:22 P. M. on June 25, 1959, was arbitrary, capricious, unwarranted, unjust, in abuse of its discretion, and in violation of the current signalmen's Agreement, particularly the discipline rules under Article 7.

(b) The Carrier now be required to reinstate Mr. W. E. Hauff to his former position with all seniority and rights restored and compensate him for all wages lost and reimburse him for actual necessary expenses he has incurred as a result of the Carrier's action (Carrier's File: 135-296-43 Spl.; Case No. 85 Sig.)

EMPLOYEES' STATEMENT OF FACTS: As shown by the Statement of Claim, this dispute involves W. E. Hauff, who was dismissed by the Carrier on July 11, 1959, following an investigation held on July 2, 1959, in connection with the derailment of Train 290 at Kensington Interlocking switch 107 at 10:22 P. M. on June 25, 1959. The Carrier conducted an investigation in connection with that derailment. A copy of the transcript of the investigation is attached hereto and identified as Brotherhood's Exhibit No. 1.

Another train derailed at the same switch on October 21, 1959. The Interstate Commerce Commission investigated these derailments and issued one report covering both derailments. The Interstate Commerce Commission's report dated February 5, 1960, is attached hereto and identified as Brotherhood's Exhibit No. 2.

The claimant in this dispute is Mr. W. E. Hauff, who was the incumbent of a relief signal maintenance position at the Kensington Interlocking Plant and 67th Street, Chicago, Illinois. The Kensington Interlocking plant handles about two hundred and fifty (250) suburban, seventy (70) freight, and

escape responsibility for compliance with the Transportation Department rules if he voluntarily and without direction places himself in a situation where he performs work that is amenable to them.

Mr. Hauff's responsibility for the derailment of train No. 290 on June 25, 1959, is clear. The transcript of formal investigation is replete with evidence that absolutely no indication was found of any malfunctioning of the interlocking either before or after the derailment. Only two men, Signal Maintainer Hauff and Leverman Walenga, were in the interlocking tower when the accident occurred. Both agree that Mr. Hauff operated the interlocking controls at the moment when the derailment occurred. Although Carrier recognizes that this accident was unintentional and that Mr. Hauff was motivated only by a desire to help the leverman, nevertheless Mr. Hauff must assume full responsibility for the derailment of train No. 290.

Rule 701 is the Discipline Rule in the Signalmen's Agreement. It is a rather complicated rule and has been the source of numerous disputes between Carrier and the Brotherhood as to its proper interpretation. In the present case, as in numerous others on the property and before the Board, the Organization has charged the Carrier with a host of alleged procedural violations of the rule. Carrier believes and contends that the rule has not been violated; however so the Board may be advised as to the nature of these disputes, Carrier attaches as its Exhibit No. 3 the General Chairman's letter of appeal to the Manager of Personnel dated August 3, 1959, and Carrier's Exhibit No. 4, the Manager of Personnel's reply dated September 28, 1959.

It is the position of the Carrier that Mr. Hauff was given a fair and impartial investigation, that he was proved to be responsible for the accident that occurred on June 25, 1959, and that there has been no violation of the rules agreement. The claim should be denied.

All data in this submission have been presented to the Employes and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this dispute is W. E. Hauff, who was employed as a relief Signal Maintainer at the Kensington Interlocking Plant in Chicago, Illinois, on June 25, 1959.

The Signal Maintainer's duties at Kensington includes the maintenance of all Signal Apparatus. The employe assigned to operate the Interlocking Machine is a Leverman, not covered by the Signalmens Agreement. It was not unusual for Mr. Hauff to assist the Leverman to expedite traffic.

During his tour of duty on June 25, 1959, on which date Mr. Hauff was working the Second Trick (3 P. M. to 11 P. M.), the weather was extremely stormy, high winds, rain and a considerable amount of thunder and lightning.

The Leverman became very busy on the telephone. In order to expedite matters and move trains, Mr. Hauff voluntarily assisted the Leverman in routing a waiting train thru the Interlocking plant. In order to move the north-bound Gary as soon as train 290 cleared the route, Hauff moved lever 107. After he moved that lever he noticed the track lights indicated tracks No. 3 and No. 4 both were occupied by trains. He knew that the situation was not normal, so he put lever 107 back to normal position and then noticed that every track on the north end of the platform was lit up.

Shortly thereafter the tower was advised that train No. 290 was derailed at Switch 107 at 10:22 P. M. on June 25, 1959, because of the movement of Switch 107, after part of the cars in that train had passed over the Switch.

On June 29, 1959, Superintendent Bodell wrote a letter to the employees involved, including Mr. Hauff.

We quote letter:

"Please arrange to attend a formal investigation which is to be held in my office, Room 206, Central Station, Chicago, at 9:30 A. M., Day-light Saving Time, Thursday, July 2, 1959, to develop facts and determine your responsibility, if any, in connection with accident that occurred near Mile Post 14.21, 113th Street at 10:22 P. M., Central Standard Time, June 25, 1959, when Illinois Central suburban train 290, motor 1391 was derailed shortly after leaving Kensington Suburban Station platform, resulting in considerable damage to property and injury to passengers.

"Arrange to be present at the place, time and date specified and you may have a representative and/or witnesses in your behalf as provided for in your Schedule agreements."

At about 4 P. M. on July 1, 1959, Mr. Hauff received the notice to attend the investigation to be held on July 2, 1959.

It is the claim of the Employee that the notice of the Hearing violated Rule 701(a) of the Agreement in that the Claimant was entitled to not less than 72 hours advance notice, which he did not receive, that the advance notice was necessary for the Claimant to secure witnesses and the Representatives of the Brotherhood. Such violation of Rule 701(a) jeopardized the rights of the Claimant and was deliberate, arbitrary and capricious action on the part of the Carrier.

The record clearly shows that the Claimant was present at the investigation held on July 2, 1959, that he was represented by Mr. Jack D'Arcy of the Signalmen, who was present and examined various witnesses, that at no time was there a request for a delay or for additional time. That Claimant and his representative were given every opportunity to examine the witnesses. At the close of the investigation, and it was a rather lengthy one, Superintendent Bodell, who was conducting the hearing, asked this question.

Mr. Bodell: "When I call your name please indicate if this investigation has been held in a fair and impartial manner so far as you are concerned?"

Mr. Hauff: "Yes Sir".

It is well settled that notices, such as one required under Rule 701(a), can be waived.

Here is a case in which the record shows that the Claimant appeared at the hearing with his representative and answered the question in the affirmative, that he was familiar with what the investigation was about and ready to proceed with it. In Award No. 4239—Third Division (Rader) this Division said: we quote.

"It is a well-established principle in legal procedure, both criminal and civil, that a defect in any notice can be waived. Likewise, this is true in the rules of an agreement." See Awards 6924 and 7325.

The investigation was a fair one, and Mr. Hauff was extended every right that he was entitled to.

It is contended that Rule 706, which specifically provides that a transcript will be made and furnished the Claimant and his representative was violated. With this we cannot agree, the record shows that copy of the transcript was personally handed to Mr. Hauff's representative, Local Chairman D'Arcy. Thus there was no violation of Rule 706.

The record shows that it contains Ample Evidence that Claimant was responsible for the derailment of Train No. 290. It was not disputed by the parties that the cause of the derailment was the fact that Switch No. 107 was thrown by Mr. Hauff while train No. 290 was passing over it. Claimant's own testimony showed that he was the one operating switch No. 107 at the time of the derailment. See record page 116 reading in pertinent part:

"Q. Mr. Hauff, did you operate any of the levers in the tower?

A. Only one and that was to put 108 back and throw 107.

Q. Was that when the derailment occurred?

A. That was it.

Q. Do you feel Mr. Hauff that your handling of this switch 107 contributed to the derailment?

A. Well it did go over but it should not have."

Claimant objects that he was charged with violating operating rule 616, which he claims does not apply to Signalmen. In making this allegation he has chosen to ignore the fact that Claimant was operating interlocking apparatus at the time, and he was subject to the operating rules which govern the operation of that type of equipment.

There are other questions raised by the Employees, all of which have been carefully considered, we find no violation of the Agreement.

During the time that his case has been pending, the Carrier offered to reinstate Mr. Hauff without pay for time lost, this offer was refused. We believe that fairness demands that Mr. Hauff be reinstated with Seniority and Rights protected, but without pay for time lost.

We hold that the Carrier did not act in an arbitrary, capricious or unwarranted manner as in violation of the current Signalmen's Agreement, in dismissing W. E. Hauff on July 11, 1959.

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 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 not violated.

AWARD

Carrier had a right to dismiss W. E. Hauff but is required to reinstate W. E. Hauff without pay.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 4th day of October, 1961.