

Award No. 13751
Docket No. SG-13830

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Air Line Railroad Company:

On behalf of Signal Maintainer H. J. Edge, Aberdeen, N. C., for compensation lost during a 30-day actual suspension that was based on his alleged responsibility in connection with a motor car occupying the main track between Fleet and Vass, N. C., on the time of train No. 4, October 19, 1961. [Carrier's File: PD-16973; G-10-2]

OPINION OF BOARD: The Signalman Claimant admittedly allowed his motor car to occupy the main track ahead of, and on the time of, a fast passenger train. The Carrier's investigation convinced it that Claimant failed to comply with General Order No. 2 and that he failed to provide the flag protection required by Rule 99. Its judgment was that for these violations Claimant should serve a 30-day suspension. We are asked to compensate him for the time off.

Carrier sent Claimant a written notice to attend a "formal investigation . . . to develop facts and place your responsibility in connection with your occupying the main track . . . on the time of train No. 4, October 19, 1961, without proper flag protection." The notice also said "you may be represented and have any witnesses present at this investigation in accordance with the provisions of your work agreement. During the course of the investigation, your personal record will be reviewed."

After receipt of the notice Claimant requested and was granted a postponement of the formal investigation from October 27 to November 20, 1961 because his desired representative could not be present at the earlier date.

A careful review of this record, the formal investigation transcript, and the applicable agreement does not disclose that Claimant's substantive rights were violated by reason of the written notice he received not containing a direct charge that he violated a specific rule. In arriving at this result we

are not only able to review the previously quoted language of the notice received, but are also advised by Petitioner that the circumstances of the event were discussed with Claimant, prior to his receiving the notice, to the point of his being asked to give a statement (which he did), and to accept responsibility for the near accident (which he refused). Being unable to find evidence that Carrier's disciplinary action against the Claimant was neither arbitrary nor capricious, or a breach of managerial discretion, and being of the opinion that "Safety First" is a mandate as well as a slogan, we will deny the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1965.

DISSENT TO AWARD NO. 13751, DOCKET SG-13830

Award No. 13751 has now taken its place among the many examples of the Majority (Carrier Members and Referee) granting a Carrier relief from its agreement with its employees. The controlling agreement requires that an employe be apprised of the exact charges against him; this the Carrier did not do. See recent Awards Nos. 11019, 11794, and 12814.

The Award is further defective by reason of its failure to any of the arguments offered by the petitioner; those arguments are overruled arbitrarily.

Award No. 13751 is in error; therefore, I dissent.

W. W. Altus
For Labor Members.