

Award No. 15179
Docket No. MW-15850

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without just and sufficient cause and on the basis of unproven and disproven charges, it suspended Section Foreman Yasumasa Akiyama from service during the period from December 19, 1964 to January 17, 1965 inclusive. (Carrier's File 19-a.)

(2) Section Foreman Yasumasa Akiyama's record be cleared of the charges and he be reimbursed for any loss of compensation incurred in accordance with Rule 24 (a) of the Agreement.

NOTE: Transcripts of the investigation have been made by the duplicating process by the Carrier. Hence, the Employees will not submit the transcript with our submission but we shall expect the Carrier to submit a full and accurate copy thereof with its submission as per the last sentence of the first paragraph of "INSTRUCTIONS FOR PREPARING SUBMISSIONS TO THE THIRD DIVISION . . ." dated December 18, 1958.

OPINION OF BOARD: We have consistently held in discipline cases that we would not substitute our judgment for that of the Carrier unless it was clearly proven that the Carrier, in exercising its right to discipline, acted in an arbitrary or capricious manner.

The record shows that Carrier's investigation was properly conducted. The transcript, however, shows the Claimant followed the established practice of calling the Interlocking Operator at oFrt Wright to "hold back" trains because at the location involved it is impossible for motor car operators to provide flag protection for the movement of motor cars under Rules 99 and 99(m).

The transcript shows clearly that under such circumstances, the operator would "leave the signal set at stop." The operator involved admitted he heard

Claimant say "hold them back," after which he "completely forgot" about the request. He admitted he understood what Claimant said, and the request to "hold them back" was made by Claimant about 50 minutes before the accident. However, this operator cleared Train 201, and the accident ensued. Carrier imposed a thirty days suspension against Claimant, but restored him to service after twenty days.

We believe the Carrier's action against Claimant was a capricious exercise of its authority in the light of the facts developed by Carrier's investigation. The claim will, therefore, be sustained.

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 Employes involved in this dispute are respectively Carrier and Employes 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.