

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19993**

Docket Number SG-19657

Irwin M. Lieberman, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company - Texas and  
( Louisiana Lines

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of  
Railroad Signalmen on the Southern Pacific **Transportation**  
Company (Texas and Louisiana Lines) that:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 700, when it did not properly charge Signal Maintainer F. J. White prior to the investigation held November 24, 1970. The discipline of thirty (30) days suspension is unreasonable and is not justified by the facts developed in the investigation.

(b) Carrier now pay to Signal Maintainer F. J. White for all straight-time, overtime, and holiday pay lost as a result of the suspension; and that charges be cleared from his record.

OPINION OF BOARD: Claimant was a Signal **Maintainer** with regular hours of **8:00 A.M.** to **4:30 P.M.**. On November 3, 1970 Claimant worked his regular hours and continued till between 3:00 A.M. and 3:30 A.M. on November **4th**, when on his way home he was involved in a vehicular accident resulting in injury to him and damage to his truck. He had called his supervisor at about 4:00 P.M. **and advised him** that he had intermittent signal trouble at a particular tower and that he intended to work on it as soon as he finished his then current assignment. He also asked his supervisor for help on the signal problem. **Claim-**ant finished his assignment at about 7:00 P.M. and after dinner proceeded to try and find the trouble, knocking off at about 3:00 A.M.

Several days before the incident above, on October 28, 1970, Carrier's Supervisor issued a letter of instruction to all Signal Department **employees** on the Houston Division as follows:

"Overtime paid the Signal Department employees on the Houston Division is at an all-time high and **completely** out of comparison with other divisions with similar conditions.

There are many contributing factors, some of which we have no control over, such as **storm** accidents, vandalism, etc.; however, there are many ways we can help control this excessive overtime. some are as follows:

- "1. Make permanent repairs instead of temporary repairs.
2. Make regular inspections of your district, making needed repairs at this time instead of waiting to do it on overtime.
3. Make written report of any condition which is affecting the function of the signals that you cannot correct.
4. Plan your maintenance to reduce traveling time. For instance, when you are in a certain area or town, do your maintenance work while you are there instead of skipping from one place to another and back again unnecessarily.
5. When waiting for another department to perform work, this time **should** be utilized in making inspection and repairs instead of sitting in truck. Take advantage of your opportunities to improve your district.

Each of you are assigned a maintenance district and you are responsible for inspections, adjustments and proper maintenance of signals and other apparatus on your respective district.

Each **Maintainer** should shoot trouble and make repairs on his own district and MUST NOT call another Maintainer or Signal **Inspector** until he has contacted the Asst. Signal Supervisor or Supervisor first.

If repairs cannot be made or trouble cannot be found in a reasonable length of time, Asst. Supervisor must be advised.

A report must be made of all overtime, showing the following information:

1. Cause of trouble in detail.
2. Time called.
3. Time released.
4. Who called.

Terminal Maintainers should furnish written report in duplicate daily to the Signal Supervisor. Maintainers out on the line should make wire report, addressed to Dispatcher, Signal Engineer and Signal Supervisor.

**Each** report will be thoroughly investigated by the Signal Engineer's office and by the Signal Supervisor."

By letter of November 16, 1970 Claimant was charged as follows:

"You are charged with failure to comply with instructions when you failed to notify Assistant Supervisor and worked an excessive number of hours on the night of November 3 and A.M. of November 4, 1970, which may have contributed to your being involved in a vehicular accident causing injury to yourself and damage to vehicle, while employed as a Signal Maintainer, Houston, Texas."

Subsequent to investigative hearing, Claimant was found **guilty** of the charge and given a thirty day suspension. This penalty **was** later reduced to thirteen days.

Petitioner alleges that Claimant was not informed of the exact charge against him in conformity with the Rules and that in any event the charge was not proved. The record discloses that Claimant and his representative were aware of the letter of October 28th and its relevance to the investigation; Claimant's rights were not jeopardized by the wording of the charge. However, the record seems to indicate that the thrust of Petitioner's contentions were directed to the vagueness of the letter "rule" quoted above. Specifically, Carrier rested its case on the sentence: "If repairs cannot be made or trouble found in a reasonable length of time, Ass't. Supervisor must be advised." The transcript indicates that for the first time at the investigation, Carrier interpreted the **sentence** above to mean that about four hours was a reasonable length of time. Neither Claimant nor any other employee could possibly have known, prior to the hearing, exactly what was meant by the quoted injunction above.

By long **established** policy, this Board will not substitute its judgment for that of the Carrier in discipline cases. We will not disturb a decision of Carrier which is **supported** by substantial evidence nor will we upset the penalty imposed unless it is arbitrary or **capricious**. In this case we find no evidence whatever in the investigation relating to the vehicular accident. Additionally, there is no evidence to support the contention that a conscientious employee's efforts to solve a problem were outside the pale of the vague "reasonable length of time" rule. At best, from Carrier's point of view, Claimant was guilty of poor judgment; there is no substantial evidence to support a finding of guilty by Carrier. We shall sustain the Claim, but payment will be in accordance with Rule 700 (h) only.

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;

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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 "as violated.

A W A R D

Claim sustained; payment in accordance with Rule 700 (h).

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1973.