

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19996
Docket Number SC-19674

Irving T. Bergman, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: {

(Burlington Northern Inc.

(Formerly Spokane, Portland and Seattle Railway Company)

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Burlington Northern, Inc. (former Spokane, Portland and Seattle Railway Company):

In behalf of Signal Maintainer J. W. Danley, Jr. for all time lost in connection with collision between motor car **sod U. P.** Extra 312 West, **subsequent** investigation, and discipline of 30 days' suspension.

[Carrier's File: **SI 20(b) 1/6/71**]

OPINION OF BOARD: Claimant is a signal maintainer who was operating a motor car on a single track when it struck a **train** coming in the opposite direction. After a **disciplinary** hearing, **claimant** was assessed an **actual** 30 day suspension **from** which appeal **was** taken. It is the Organization's position that the appeal **must** be granted and the **claim** sustained pursuant to Rule 66 of the Agreement because the Carrier's Assistant Vice President to whom the appeal was **directed** did not respond within the 15 day time limit of Rule 66.

The Carrier's position is that Rule 66 has been superseded by **Article V** of the August 21, 1954 National **Agreement** which allows 60 days from the date the appeal is received within which to respond. The Carrier's officer replied to the appeal well within **the 60 days**.

We shall first dispose of this issue in **order** to determine whether or not we may consider the merits. There is no doubt that the parties herein had adopted the National Agreement. The record does not indicate any argument by the Organization to the contrary. The **Signalmen's** Organization **took the same** position in a case before **this Division which was decided** in favor of the Carrier on this issue. The Award No. **8712** in that **case is controlling**. It **was** found that Article V, Section 3 of **the National Agreement** of August 21, 1954 applies to discipline cases and that the 60 day time **limit** to answer the appeal **would** apply.

As to the **merits**, we note from the record and from **reading** the transcript of the hearing that the charges were properly stated and no objections were made or adjournment **requested**. The claimant **was represented** and had opportunity to question Carrier's witnesses and to produce witnesses in his behalf. A number of prior Awards (17965, 17525, 16678, **16261**), have **held** that **objections** to procedure and conduct of the hearing should be **made** prior to or **at** the hearing. Petitioner **was** furnished with a copy of the transcript and no violation of Rules **relating** to disciplinary proceedings or prejudice to Petitioner is indicated by the record.

It is well settled and the number of Awards are so many that **reference** is not necessary to support the fundamental concepts by which we are guided in considering the testimony. There is substantial evidence to support the Carrier's decision; we will not determine conflicts in testimony or attempt to determine demeanor and credibility of witnesses; there is not such flagrant abuse of discretion which would compel us to substitute the judgment of **this** Board for that of the hearing officer. Claimant admitted in his testimony that before the accident, he passed three signals, two yellow and one red, which gave notice **that** ~~a~~ train or motor **car** was on the **same** track in the same block. The imperative need for safety in railroad operations demanded the exercise of caution sufficient to avoid the accident, and left no room to speculate on the possibility of proceeding further without risking an accident.

The penalty assessed was not so excessive, arbitrary or capricious in the circumstances of this **case** as to justify action by this Board with regard to it.

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

The claim should be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third **Division**

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.