

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20007  
Docket Number TE-19923

Burl E. Hays, Referee

(Brotherhood of Railway, Airline and Steamship Clerks  
( Freight Handlers, Express and Station **Employees**  
( (Formerly Transportation-Communication Employees Union)

PARTIES TO DISPUTE: (

(Maine Central Railroad Company Portland Terminal Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the **Transportation-Communication** Division, BRAC, on the Maine **Central-Portland Terminal Company, T-C 5861**, that:

1. Carrier violated the terms of the agreement when it assessed thirty (30) marks against the service record of Operator D. C. Smith.

2. Carrier shall be required to clear the record of Operator D. C. Smith of the thirty (30) marks assessed against him.

OPINION OF BOARD: Claimant D. C. Smith was working an Operator's position in Tower #1 at approximately 8:14 p.m. on June 25, 1971, when a switching derailment occurred in the vicinity of signals under his control.

An investigation was held to determine Claimant's responsibility, if any, "in taking the controlling signal away from a crew which had your **permission** to shove cars westerly on track #2, and routing a drag of cars moving from track #1 westerly onto track #2." Upon conclusion of the Investigation, Claimant was disciplined by being assessed thirty (30) marks against his service record,

In the handling given this dispute on the property, and before this Board, in addition to handling on the merits, Petitioner also alleges a number of procedural defects on the part of the Carrier. We have reviewed these procedural arguments and the **authorities** relied upon and, in our considered judgment, **find** them to be without substance. The transcript of the Investigation develops without **question** that Claimant knew precisely what the charges against him were when **he** appeared and participated in the Investigation. Moreover, the transcript indicates that the officer assessing the discipline did not offer testimony **or** evidence in the course of his role as Investigating Officer, as alleged. We will, therefore, dismiss all procedural allegations made by **Petitioner**.

Regarding the issue of Claimant's responsibility for the derailment, examination of the evidence in the transcript indicates that prior to 8:14 p.m. on June 25, 1971, Claimant Smith had properly lined up controlling signals to permit a crew to shove cars westerly on track #2. Several minutes later he received advice that the crew had completed their switching west of the signal and, upon receiving a request from another crew, he took the signal

away from track #2 and lined the signal and switches so that a different crew could make a movement from track #1 onto track #2. At this time the first train crew ran past the signal, which was then in a Red stop position, and the derailment resulted. Based on the evidence it is difficult for us to place responsibility for the derailment upon the Claimant. There is nothing in the record to indicate that when Claimant determined that the first series of movements were completed, it was not proper for him to line up the signal and switches for the second series of movements. We will, therefore, set aside the assessed discipline.

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 violated.

A W A R D

Claim sustained.

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

ATTEST :

A. W. Paulos  
Executive Secretary

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