

NATIONAL RAILWAY ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20661  
Docket Number SG-20191

David P. Twomey, Referee

(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Erie Lackawanna Railway Company

STATEMENT OF CLAM: Claim of the General **Committee** of the Brotherhood  
of Railroad Signalmen on the Erie Lackawanna Rail-  
way Company that:

(a) Carrier violated the Signalmen's Agreement, particu-  
larly Rule 60, when it did not afford Leading Signal Maintainer S. A.  
Intersimone a fair and impartial investigation in connection with  
alleged charges dated November 5, 1971.

(b) Carrier should compensate Mr. S. A. Intersimone for  
all time lost, including overtime, resulting from the discipline of  
10 days suspension.  
/General Chairman's File: 425 -- Carrier's File: 199 Signalmen/

OPINION OF BOARD: At 3:20 P.M. on November 2, 1971, the signal and  
switch appliances at **Millburn** Interlocking failed  
to function. The claimant, contrary to posted instructions, improperly  
manipulated the equipment connected with the control of these appliances.  
The result was that Claimant defeated the "fail-safe" feature of the  
appliances and allowed **commuter** trains to pass through the signal with  
absolutely no protection being provided. An investigation was held at  
which Claimant admitted responsibility and based on this he was  
assessed ten days actual suspension.

The Organization claims that the Claimant did not receive  
a "fair and impartial hearing" because (a) the Carrier's Hearing Offi-  
cer refused Claimant's representative's request to sequester witnesses  
and (b) because different officers of the signal department brought  
charges and acted as **prosecutor, judge** and jury. We shall deny this  
claim. Concerning the sequestering of witnesses, awards of this Divi-  
sion have held that unless a rule of agreement requires witnesses to be  
called to testify separately, it is not a violation of the employee's  
right to a fair and impartial hearing: this is especially so where  
there is no valid basis for exclusion propounded at the time of the  
hearing. Concerning the Organization's second contention, that the  
Claimant was not afforded a fair and impartial hearing because dif-  
ferent officers of the signal department brought charges and acted  
as prosecutor, judge and jury, we find such contention contrary to  
many decisions of this Division, which hold that it is proper proce-  
dure for one officer to prefer the charges, another to hear the case  
and another to render the decision.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1975.