

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21498
Docket Number CL-21367

David C. Randles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(Express and Station **Employees**
(
(Robert W. Slanchette, Richard **C. Bond**
(and John H. **McArthur**, Trustees of the
(**Property** of Penn Central Transportation
(Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the **Brotherhood**,
GL-7979, that:

(a) The Carrier violated the Rules Agreement, effective September 1, **1949**, particularly Article **27**, when it assessed discipline of **10 days suspension plus 10 days suspended suspension**, on **E. Mattler**, **Block Operator at Devon Tower, Connecticut, New** Raven Line of Penn central Railroad.

(b) Claimant **E. Mattler's** record be **cleared** of the charges brought against him on July 31, **1974**.

(c) **Claimant E. Mattler** be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: **Subsequent** to an investigation held on **August 7, 1974**, **Claimant was found guilty of violation of** operation of control boards as contained in Rules **CT-90** and **F of CT-400**. Claimant was assessed discipline of **ten days' suspension from service plus a ten-day suspended sentence**. At the time of the incident leading to the cause of the investigation, **Claimant** was the **regular** occupant of position as block operator at **Devon Tower, Devon, Connecticut**. **Devon is** within the location of catenary wire territory and when linemen's work is necessary in this area, catenary wires are de-energized by use of a remote control **board located in** Devon Tower. The board consists of **control switches and red and green indicating lamps**. A **red light** indicates the **line** is energized while a green light denotes the line **is** de-energized. The controlboard is operated by the telegrapher **on duty at Devon Tower** in accordance with the instructions of the load dispatcher located at Cos Cob. At **approximately 7:00 a.m., July 31, 1974**, the block operator attempted to cut the power over Track 3; on the **first** try, the red light on the board went out but the green light did not go on. Claimant stated that it didn't look right and tried it again with the same result, except that the lineman, who asked that the line be de-energized so that he could perform maintenance work and who was standing in the tower with

Claimant, **claimed** that the green light was on faintly. Claimant **again** stated that it didn't look right, but nevertheless put the working device on and told the load dispatcher that the **line** was **open** and blocked. Koweever, it was not open **and when** the electrical lineman tried to ground the 11,000 volt *overhead wire* he discovered the power was not off. Carrier argues that the foregoing description of events constituted a violation of **Rule F**. They state that "**a reasonable man** would have immediately contacted the **Load Dispatcher regarding** the apparent **malfunction** of the control board before he put the **blocking** device on and reported the **line** open to the dispatcher." We **concur** to the extent that a reasonable man should have **immediately** contacted the load dispatcher and we cannot **minimize** the responsibility of exactly following operating roles that are designed to protect life and property.

Koweever, the facts of record establish some mitigation. Two attempts were made to de-energize the line to permit the electrical lineman to perform his work; he was in the tower when these attempts were made; he indicated that he thought the line indicators looked OK. The control board under these circumstances of operation was to have indicated no **green** light whatever. The **green light was** on faintly. The rule does require that the operator notify the dispatcher **immediately** because of a malfunction. Claimant should have notified the **load dispatcher** that he had only a faint green light before the lineman attempted to ground the line. It **is, apparent** that the claimant violated the rule.

On this record, nonetheless, we find the discipline assessed to be excessive. From the totality of circumstances a reprimand or suspended suspension would have been adequate for purposes of the **imposition** of discipline. Accordingly, we will set aside the ten days' actual suspension and let stand the ten days' suspended suspension.

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 discipline be reduced.

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Parts (a) and (b) of the claim denied; part (c) of **the** claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.