

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22053**
Docket Number SG-22033

Herbert **L.** Marx, Jr., Referee

PARTIES TO DISPUTE; ((Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

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

On behalf of former Signal Maintainer **W. R. Brill** for reinstatement to the service with pay for time lost and seniority and other rights unimpaired.

OPINION OF BOARD: Following a full and impartial investigative hearing, Claimant was dismissed **from** service for violation of Rules M-630, M-638 and 801 in **connection** with his failure to inspect an adequate number of warning signals in July and August 1976 and his further failure to report such shortcomings.

Of the Rules referred to, the Board finds particularly pertinent that portion of Rule 801 which properly forbids an **employee** to be "careless of the safety of . . . others" or to be "indifferent to duty". Whatever the mitigating circumstances may have been, as testified to by the Claimant, the results of his actions were indeed in contravention to the quoted Rule and contrary to responsible performance of duty. Making the situation of even great consequence is the consideration that the Claimant had been previously disciplined for a similar offense.

In finding that the Carrier properly disciplined the Claimant, the Board nevertheless holds the penalty of dismissal **from** service to be excessive. Claimant has been out of service for an extended period, during which it is assumed that he has had cause to consider the seriousness and **immaturity** both in his neglect of duty and in his failure to advise his superiors on a timely basis.

The Board will therefore order the Claimant to be restored to duty promptly, with seniority and other rights unimpaired, but without back pay.

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 to the extent shown in Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **12th** day of May **1978**.

