

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22169  
Docket Number SG-22161

Louis Yagoda, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

A. The Missouri Pacific Railroad violated the current Signalmen's Agreement, particularly Rule 700, when *it failed to prove charges* brought against Signal Maintainer W. C. Parker prior to and tried in an investigation held on April 15, 1976 at Chester, Illinois as follows:

This is a formal investigation to develop the facts and place the responsibility, if any, in connection with the report that you failed to properly ~~maintain the Hot Box~~ and *bagging* equipment detector located at Mile Post 92 Pole 28 on the Chester Subdivision during the month of March, 1976.

3. The Brotherhood of Railroad Signalmen requests that Mr. Parker be paid One Months pay, \$1453.80, for time lost, including any overtime earned by others on his assigned territory from April 20, 1976 to May 20, 1976 during which time he was improperly held out of service." [Carrier file: K 225-707]

OPINION OF BOARD: We find not sustained, contention of Claimant's representatives that Claimant was not afforded his right to be notified explicitly of the charges on which he was to be tried in the notice summoning him to the investigation which resulted in Carrier's decision to apply the subject disciplinary dismissal. The description of the subject of hearing makes it unmistakably clear that Claimant is called to answer to the "report that you failed to properly maintain the Hot Box and Dragging equipment detector" at a specifically identified period. There could and should have been no doubt in Claimant's mind that the occasion was for the purpose of developing the facts and placing responsibility, if any, (as the notice explicitly states) in connection with the specifically identified accusation against him.

It was credibly established at the investigation that on March 26, 1976 Carrier technicians found a hot box detector assigned to Claimant for maintenance surveillance and operative efficiency to have been seriously defective to an extent making it totally inoperative. 'The evidence further establishes that these conditions were within both the parer and the duty of Claimant to have avoided or corrected.

Claimant admitted that he had prior knowledge of the deficiencies found in certain of its serious aspects. He testified that he had knowledge of the damaged shutter on the detector for 15 days prior to March 26, 1976. He explained that on detecting this, he would lubricate the shutter "and it would work for a tine". It appears clear that such known repeated failures called for a replacement of the shutter (Claimant admitted that a spare shutter was available). In spite of the fact that he stated he came into contact with the detector two or three times a week to change graph paper and had removed a tape from it only two days before March 26th, Claimant admitted that the last time he checked the piece of equipment was three weeks prior to March 26th. Yet Claimant acknowledged that he could have detected, by reading the graphs, that the detector was not functioning properly.

The record also discloses admission by Claimant that he did not comply with the requirements of Rule 537 that inspection shall be made as soon as practicable and any troubles detected corrected, after severe storms.

These lapses in duty and in responsibilities are of serious negligence and created grave potentials of hazard to property, equipment, personnel, passengers and freight.

We conclude that Carrier acted on valid and just grounds in imposing the subject thirty (30) days 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;

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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:

G. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.