

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD **DIVISION**

Award Number **22597**
Docket **Number** SG-22561

George S. **Roukis**, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: "Claim of the General **Committee** of the Brotherhood
of Railroad Signalmen on the St. Louis-San Francisco
Railway Company:

On behalf of Mr. **H. R. Hendrix**, Signal Maintainer, New Albany,
Miss., for compensation for all **time** lost between 4:00 p.m. November 18,
1977, **and** 8:00 a.m. December 5, 1977, when he returned to work, straight
time rate for all regular assigned hours missed, 8 hours for holiday **pay**
on November 24, 1977 **at** straight time rate, plus **all overtime** which was
performed on his assigned territory, at overtime rate, between **4:00** p.m.
November 18, 1977, and 8:00 a.m. December 5, 1977."

OPINION OF BOARD: An investigative hearing was held on November 2,
1977 to determine claimant's responsibility, if
any, in connection with his alleged violation of Rule 588 of the
Maintenance of Way Rules.

Claimant was found guilty of the asserted infraction and
assessed a ten **(10)** day suspension without pay penalty.

Rule 588 which is referenced herein reads:

"Signal Maintainers shall be responsible for the safe
condition, inspection, adjustment, and proper main-
tenance of signals, **interlockings** and other apparatus
under their charge."

Carrier contends that the hot box detector at MPC - 577 & 21
poles did not operate properly from the time claimant last inspected
and certified the detector O.K. on October 19, 1977 until it was
corrected after the journal failed on the **CTB** on October 21, 1977.

Claimant argues that he followed all of the oral and written
instructions in checking out the hot **box** detector on October 19, 1977
and it was working properly.

Our review of the investigative transcript reveals that claimant performed all of the tests required of him when firing the hot box detector and in the presence of several **supervisors**.

The October 24, 1977 letter from the Division C & S Supervisor to claimant et al., directing them to observe that shutters are operating properly after the completion of the inspection and the firing of the **detector**, reflected an **ex** post facto change in the inspection procedures.

Carrier, of necessity, has the right to promulgate and introduce new inspection modalities vis this activity, but not retroactively.

For many years claimant followed inspection procedures in the full presence of his supervisors which required that he hear shutters open on the hot box detector rather than see them. **It** was an audio rather than a visual determination.

To hold him accountable for a procedural change before it was introduced runs counter to the canons of acceptable due process.

For these reasons, we are compelled to sustain the claim for all time lost during the period of his **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 Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTBST: 
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.
