

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRDDIVISION

Award Number 22703

Docket Number **SG-22537**

Richard R. Rasher, 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:

On behalf of **Signal Foreman R. R. Tucker**, who was suspended for thirty days by discipline notice dated July 6, 1977, for pay for **all** time lost, including overtime worked by others **on** Mr. Tucker's **Foreman** position, during **the** period of suspension, July 6 to August 4, 1977." **/Carrier** file: **B 225-745/**

OPINION OF BOARD: As a Signal Foreman, Claimant's responsibilities **on April 12, 1977** included making certain that **signals** along newly-installed tracks were connected and **operating** properly.

On May 31, 1977 it was discwered that signal **2627L** (for which the Claimant had been responsible) was displaying **an** approach **signal** for a section of track that already had a train on it. The malfunction was found to have been caused by the **incorrect** connection of two track wires. The situation was remedied and the Carrier made its False Proceed **Signal** Report to the Federal Railroad Administration.

An investigation was scheduled for June 9, 1977 but **was postponed** (at the Organization's request and by mutual consent of the parties) **until** June 16, 1977. **However**, as a result of a seventy-car derailment **on** June 16, the Carrier moved the hearing **forward** a second time, to July 1, 1977.

The hearing was held and, on July 6, 1977, the Claimant was suspended for thirty days without pay. Claimant was furnished with a copy of the transcript and the discipline notice. The Local Chairmen and the General **Chairman** only received copies of the transcript, **even** though the Local **Chairman** had requested, at the hearing, that he be furnished with a copy of **the** discipline notice. He did not receive the notice until he made a subsequent request, on July 25, 1977.

The Organization protests the discipline on both procedural and substantive grounds.

Procedurally, the Organization alleges that the investigation was not **timely** held; the discipline notice was not timely furnished; the Carrier improperly restricted questioning during the hearing; and, the **Claimant** was accused of one thing (improperly connecting the wires) but disciplined for another (failing to see that they were properly connected).

The Organization also contends that the Carrier failed to **meet** its burden of proving **that** the Claimant had acted irresponsibly. The Organization's position is **that** it is unlikely that a false proceed signal would go unnoticed for 49 days. The Organization claims that someone else **must** have subsequently tampered with the wires.

In claiming that the investigation was untimely, the **Organization** cites Rule 700(b) which provides that an investigation will be set for hearing within ten days following the date the **employee** is notified of the charge "except (the time limits may be extended) by mutual agreement between the Management and the **employee** or his duly accredited representative." The Organization claims that the postponement from June 16, 1977 to July 1, 1977 was not by mutual consent and that the Carrier failed to indicate what effect the June 16 **derailment** had on its ability to conduct the investigation.

In claiming that the discipline notice was not timely furnished, the Organization cites Rule 700(d) which provides **that** a copy of the transcript and notice of discipline assessed "will be furnished to the representative **who** assisted at the investigation **within.....ten** days, if requested." The Organization rejects the Carrier's defense that the delay was a clerical error which did not prejudice the **employee's** rights. It emphasizes that the "Board may not overlook the time limits, but **must** apply the agreement as negotiated."

The Carrier contends **that** the Claimant was responsible for the **malfunction** and that his rights were not prejudiced by reason of any alleged violation of **Rule** 700, Paragraphs **(b)** and **(d)**.

The Carrier acknowledges that the second postponement of the hearing was made without the General Chairman's consent, but points **out** that the seventy-car derailment called **on** the services of most of the participants scheduled to appear at the hearing. The Carrier adds that the postponement was not a deliberate act and that the rights of the Claimant were not prejudiced.

The Carrier also acknowledges that a vacation-relief clerk did overlook furnishing the Local **Chairman** with a copy of the **discipline** notice. The Carrier argues, however, **that** the action was not deliberate; the Claimant's rights were not prejudiced; and that there is **no** rule requiring that the discipline be set aside should the representative fail to receive his copy of the notice. The Carrier cites several awards standing for the principle that clerical error is not sufficient cause to justify setting aside the discipline.

In arguing that the charge was established sufficiently in the record to justify the discipline, the Carrier notes **that** there was no evidence that any wires had been tampered with subsequent to April **12**, 1977. The Carrier adds that there was no maintenance work done on the track since April 12, 1977 and discusses the **grave** potential hazard created by a malfunctioning signal.

It is the opinion of this Board that the Claimant was responsible for the malfunction. The Carrier demonstrated that it was unlikely that an **employee** or any other person switched the two track wires. Repairs were not scheduled for the track, no reason was given for **employees** to have sabotaged the wires, and it was likely that an individual unfamiliar with the complex wiring system would have caused more damage by such alleged tampering. We are inescapably led to the conclusion that the wires were **misconnected** while the new track was being installed and that, as **Signal Foreman**, the Claimant should have detected the error.

We find that the Claimant was charged with **misconnecting** the wires while he **was** disciplined for not detecting the error to be of no substantive consequence. Throughout the handling of this claim, Claimant and his representative were fully apprised of the events which gave rise to the charge. The slight difference in characterization between the charge and the finding of guilt is not significant. In either case Claimant's responsibility for signal maintenance on April 12, 1977 was the same. The principle that an **employee** should not be charged for **one** set of events and disciplined for another is not applicable in these circumstances.

The Carrier's failure to **timely** provide the Local Chairman **with** the discipline notice was improper. However, that failure did not impair the Claimant's rights to a fair hearing or prejudice his appeal in any subsequent handling of the dispute. Since the purpose of Rule 700(d) is to enable a claimant to perfect an appeal in normal fashion, we do not find that the Carrier's failure was a fatal error which justifies setting aside the discipline ultimately imposed.

Although the second postponement of the investigation was made without the General Chairman's consent, we find the delay was justified by the emergency nature of the seventy-car derailment. Importantly, the rights of the Claimant were not prejudiced by the postponement.

Finally, we note that the Carrier's Hearing Officer was somewhat restrictive regarding the Organization's questioning concerning a previous incident of an allegedly similar nature. The purpose of an investigation is to develop a full and complete record. We have concluded that the guilt of the Claimant was proven and that there was no indication that the Hearing Officer's action prejudiced this finding. However, we should note that in closer circumstances such actions by the Hearing Officer could prejudice the Claimant's rights to a full and fair hearing.

**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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
**Executive Secretary**

Dated at Chicago, Illinois, this 11th day of January 1980.