

NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD** DIVISION

Award Number 22819  
Docket Number SG-22702

Martin F. **Scheinman**, 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) Carrier violated the current Signalmen's Agreement, particularly Rule 700, when it failed to prove charges brought against Signal Maintainer M. F. **Branz**, Eads, Colorado, prior to and tried in an investigation held at **Eads August 4, 1977**.

(b) Mr. Branz be paid for all time lost, including any overtime earned by others on his assigned territory, beginning August 11, 1977 and continuing until he is reinstated on his **former** position as Signal Maintainer at **Eads, Colorado**. (**Mr. Branz** was dismissed from service under notice dated August 10, 1977, reinstated effective **January 17, 1978**, without pay for any **time lost**)" /Carrierfile: K 225-739/

OPINION OF BOARD: Claimant, Signal Maintainer M. F. **Branz**, after investigation, was dismissed from service effective August 10, 1977. **Claimant** was charged with (1) failing to comply with instructions concerning the proper way to claim time on his **time** roll for the July 4, 1977 Holiday, and (2) improper maintenance of the hot box detector located at Mile Post 792, Pole 5, resulting in a failure of the equipment to give proper indication. On a leniency basis, Claimant was reinstated to service, effective January 18, 1978, but without pay for **time lost**. In all, **Claimant** was out of service for a total of 137 work days.

We will first address the charge that Claimant failed to properly maintain the hot box detector. The record contains **numerous** examples of **Claimant's** failure to maintain the hot box detector. For **example**, Claimant stated that he did not inspect the hot box detector during the intervening week between July 8th and July 20th as required because he was "busy with other things." He stated that he had failed to replace the hot box detector tape even though he knew it needed to be changed. "**I** had planned to change the tape before leaving on vacation but did not get back to the **machine**."

The record also discloses that he knew that the hot box detector was located in a high dirt area. He was aware that the scanner **needed to** be cleaned at least **once** a week. Yet, Claimant failed to **take** apart the scanner and inspect the components. **He** admitted that the components had not been cleaned from July 8th until he left for vacation on July 25th. It was not until July **26th**, when the supervisor and foreman removed the scanner covers and cleaned the mirror and **lens** that an inspection and maintenance were actually performed.

Thus, the record conclusively establishes that **Claimant** was negligent in his **maintenance** of the hot box detector. He is guilty of failing to properly maintain it as charged.

The second charge is that Claimant failed to **comply** with instructions concerning the proper way to claim time for July 4, 1977. The evidence indicates that Claimant had been told by Foreman **Pipkin** that as a monthly employee, he was not to receive overtime for his work on the July 4th holiday. Nevertheless, Claimant improperly claimed Class 3 time on his payroll record for the hours worked.

However, a close analysis of the record convinces this **Board** that Claimant's entry for Class 3 **time** was not intended as a dishonest act. While the entry was improper, he did not intend to defraud Carrier.

We are convinced that **Claimant's** improper entry was due to his confusion over Supervisor Brown's instructions (as related by Foreman **Pipkin**) concerning the **time worked**. He honestly believed that putting the **time** down was the appropriate way to handle his confusion. Claimant's uncertainty was also due to the fact that he had previously occupied an hourly rated position. There, time worked on a holiday is treated as overtime. While Claimant should have followed the instructions, even if they were not absolutely clear, and grieved later, we believe that Claimant's motive must be considered in determining the appropriate penalty.

Given our finding that **Claimant's** entry for work on July 4th was an honest mistake and not a deliberate attempt to falsify **his time** roll, we are of the opinion that Claimant's **time** out of service **was** excessive. A suspension of 90 days is appropriate for the proven offenses and we do so find. Consistent with Article X of the November 16, 1971 Agreement between the parties, **Claimant** shall be reimbursed for the period of his **unjust** suspension.

FINDINGS: The Third Division of the **Adjustment** Board, after giving the parties to this dispute due notice of hearing **thereon**, and **upon** the whole record and all the evidence, **finds and** holds:

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.

A W A R D

Claim sustained in accordance with **Opinion**.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1980.