

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23155
Docket Number SG-23167

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Burlington Northern Inc.

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern, Inc:

On behalf of Signal Maintainer V. H. Yost, Seward, Nebraska, who was suspended from service for 14 days from July 31 through August 13, 1978, in violation of Rules 54(c) and 54(d), that the suspension be removed, that he be compensated for all time lost from July 31, 1978 to August 13, 1978, inclusive, that he be reimbursed for any expenses incurred and that his personal record be cleared of any reference to this investigation."

OPINION OF BOARD: Claimant, Signal Maintainer V. H. Yost, after investigation, was suspended from service for fourteen (14) days in violation of Safety Rule 893. It states:

"893. The designated employees must make inspection of switches, signals, interlocking machines, telephone, radio and other communication facilities, also, all other apparatus in their charge, to insure they are properly maintained and operating as intended."

The crux of the charges is that Claimant was responsible for a power switch improperly activating under Engine CS 5893. This improper activation caused the engine to derail.

The Organization contends that Carrier procedurally violated Rules 54(c) and 54(d) of the Signalmen's Agreement. Specifically, it alleges that Carrier violated Rule 54(c) because the Notice of Investigation failed to outline the specific offense. Rule 54(d) is alleged to have been violated because Carrier failed to give Claimant's local representative a copy of the discipline notice within the prescribed time limits.

As to the merits, the Employees argue that the punishment assessed was unwarranted, unjust and improper. In the Organization's view, a wiring error caused the power switch to improperly activate. Since the wiring error was not made by Claimant, the Organization asserts that it is inappropriate.

Rule 54(c) states:

"Rule 54. INVESTIGATIONS AND APPEALS

* * *

"C. At least five (5) calendar days advance written notice of the investigation outlining specific offense for which the hearing is to be held shall be given the employee and the appropriate local organization representative, in order that the employee may arrange for representation by a duly authorized representative or an employee of his choice, and for presence of necessary witnesses he may desire."

The purpose of this provision is to assure that the accused is informed of the investigation so that he may prepare his defense. A claimant should not be misled, deceived or taken by surprise. See Awards 16154, 16115, 15027, 14573, etc.

The Notice of Investigation here reads as follows:

"Arrange to attend investigation in the office of Signal Supervisor in the Burlington Northern Depot at Lincoln, NE at 9 AM, Thursday, June 15, 1978 for the purpose of ascertaining the facts and determining responsibility in connection with Power Switch at west end of Seward, NE, MP 28.9 allegedly activating under engine CS 5893 causing derailment of the Lincoln 7th Subdivision at approximately 8:15 AM, June 4, 1978."

We have examined the notice in question, the applicable provision as well as the citations presented. We adhere to the principle that the key factor is notice; it is unnecessary that the charge be in the technical language of a criminal charge. It is sufficient if it appears that the accused understood the purpose of the investigation for the dereliction of duty set forth in the notice. See Awards 20238, 12898, 3270. Here, the notice was precise and complete enough to place Claimant on notice as to the matter under investigation.

Moreover, it must be noted that Claimant, when questioned during the investigation by the Conducting Officer, agreed that he had received notice in the proper form to attend the investigation. Claimant's statement must be viewed as conclusive evidence that the notice was proper. In all, the evidence indicates that Rule 54(c) was not violated.

As to the charge that the notice was not furnished to the local representative, Carrier admits that it "inadvertently" failed to provide the required notice. Clearly, this is a violation of the requirements of Rule 54(d) that there be a "copy to local organization's representative." Carrier's failure to provide the required notice is not to be condoned. In proper instances, such a failure may constitute grounds for overturning the discipline imposed. However, a careful analysis of facts here indicate that the Organization was fully able to represent Claimant. There is no indication that there was undue surprise or lack of preparation. There was no demonstrable prejudicial impact upon Claimant's case. As such, we must conclude that these particular facts cannot be viewed as constituting a reversible error.

Finally, there is the question of whether Claimant is guilty as charged. Claimant's own testimony establishes that he did fail to properly perform his duties. He admitted that he had failed to read for grounds on his territory on a monthly basis as required. He also acknowledged that he knew that a crew was working on his territory and that such activity required additional grounding checks. Yet, he failed to do so.

Thus, it is clear that Claimant is guilty of violating Rule 893. After all, he did not "make inspections of switches...to insure they are properly maintained and operating as intended." Given the proven offense, we are persuaded that the imposition of a fourteen (14) day suspension is not arbitrary, capricious or unreasonable. As such, we will deny the grievance in its entirety.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.

