

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23173
Docket Number SG-22870

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri-Kansas-Texas Railroad Company)

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

Claim on behalf of D. R. Critten, Signal Maintainer, suspended from service for ten (10) days and **assessed** fifteen (15) days deferred suspension, due to an investigation held in Denison, Texas on June 2, 1978, with a request that **claimant** be paid for the ten (10) **days** he was suspended **and** his record cleared."

OPINION OF BOARD: Claimant, David Ross Critten, had a seniority date of September 5, 1972 **and** was employed **as** a Signal Maintainer when the instant **dispute** arose. **His responsibilities** included the **inspection and maintenance** of shunt wires.

On May 24, 1978, Claimant **was** contacted by a Federal Railroad Administration Inspector and **taken** to a switch at Itasca, Texas, where he was shown that the shunt wires were **missing**. Two **days** later the Carrier's **Engineer-Communications and Signals** notified **Claimant** to be present at an **investigation** to develop facts **and** determine responsibility for an alleged violation of the following rules:

"Circular No. DP-2. General Rules Governing Conduct of **Employees** in all Departments. effective **January 1, 1974** and revised January 1, 1975

Rule D, Employees must not be . . . (2) Negligent."

"Rules for the Maintenance of Way and Structures,
effective May 1, 1947

Rule H, Employees who are indifferent in the performance of their duties . . . will not be retained in the service."

The investigation was conducted on June 2, 1978 and the Claimant was subsequently notified that he was **being** assessed ten (10) work days actual suspension **and** fifteen **(15)** days deferred suspension for negligence and **indifference** to duty. The Organization initiated a claim by letter dated **June 21**, 1978, which alleged that Claimant did not receive a fair investigation and that the Carrier failed to carry its burden of proving a violation of **Rules D and H**.

The thrust of the Organization's argument that Claimant was denied a fair hearing was that the Carrier refused him the opportunity to **cross-examine** certain witnesses, particularly the Carrier officer who authored the notice of investigation. This **Board** finds that the Claimant was not denied due process by the refusal of the Hearing Officer to call certain witnesses. The Hearing Officer refused to call these witnesses because they had **no knowledge** of the incident **under** investigation. The General **Chairman** stated he wanted the **men** present "to explain the exact interpretation of the rules Mr. **Critten** (had been) charged with." However, an investigation is not a rules class and the charges **were** specific and **unambiguous** giving the Claimant precise notice regarding the alleged violations.

Regarding Claimant's alleged **negligence and** indifference to duty, the **record** discloses the **following**: (1) **Claimant** had a large territory to **maintain**; (2) Claimant had been occasionally assigned work out of his territory; (3) **Claimant** did not **make** inspections as frequently as he had been directed to; **and** (4) the shunt wires were missing from a switch at **Itasca**, M.P. 801, which was part of Claimant's territory.

The Carrier has failed, however, to demonstrate that the **Claimant** was culpable in the **matter** of the **missing** shunt wires. There was **no indication** of how long the wires **had been** missing or **how** they came to be missing. **It was** certainly possible that causes other than the Claimant's alleged negligence were **responsible** for the missing **shunt** wires.

Thus, this Board is left with the question of an appropriate remedy. Although the facts disclosed in the record do not excuse the **Claimant's** failure to make thorough **periodic** inspections, he is not to be held at fault for the **more** serious offense of the missing shunt wires. This Board, therefore, removes the ten (10) days actual suspension and allows the fifteen **(15)** days deferred suspension to stand. The Claimant shall be **made** whole for any **earnings** and **agreement** benefits lost as a result of the ten (10) days **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 **Employes** involved in this dispute are respectively Carrier and Employee within the meaning of the Railway **Labor** Act, as approved **June 21, 1934**;

That this **Division** of the **Adjustment Board** has jurisdiction wet the dispute involved herein; and

~~That the discipline was excessive.~~

A W A R D

(1) The ten (10) days actual **suspension** shall **be** removed and the **Claimant made** whole for any lost earnings and **agreement** benefits resulting therefrom.

(2) The fifteen (15) days deferred **suspension** shall **stand**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: 
Executive Secretary

Dated at Chicago, Illinois, this **18th** day of **February 1981**.