

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23196
Docket Number CL-22916

George E. Larnay, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
 { Freight Handlers, Express and Station Employees
 {
 { The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8761) that:

(1) Carrier violated the Agreement between the Parties when it determined that Operator J. A. Turano was responsible for light Engines 7432-6453-7139-7138-6401, multiple coupled, side-swiping Cumberland Train 96 at Virginia Lane, Cumberland, Maryland, on October 20, 1976, and suspended him from service for fifteen (15) days, and

(2) Carrier, because of such impropriety, shall reverse the decision rendered assessing discipline and exonerate Mr. Turano of involved charges and, by reason thereof, compensate him for all time lost, at the rate of \$48.13 per day, for each date of the fifteen days suspended.

OPINION OF BOARD: Claimant, J. A. Turano, a third trick operator at Carrier's Cumberland, Maryland Yard was charged in connection with his responsibility for an accident which occurred on October 20, 1976, resulting in damages to Company property in excess of \$25,000. Claimant was given an investigative hearing on October 26, 1976, and subsequently informed by letter dated November 15, 1976, that he had been adjudged guilty as charged. Accordingly, Carrier imposed a fifteen (15) day actual disciplinary suspension upon the Claimant.

The Carrier submits Claimant was responsible for the accident by reason of his failure to comply with Operating Rule 104-B which required that he line the crossover switch for straight track movement. By his own admission at the investigation, Carrier notes, Claimant stated he left the crossover switch open. Carrier asserts that as a direct result of Claimant's action, five (5) light engines, coupled in multiple, moving east to west from Yard A to the roundhouse, proceeded into the Virginia Lane station limits on the improperly lined crossover and side-swiped eastbound Train Cumberland 96.

The Organization argues the blame for the accident lies not with the Claimant but rather with the crew operating the five (5) light engines, cc said crew proceeded into the Virginia Lane station limits without proper authority. such proper authority, asserts the Organization, flows from hand and light signals which, under the surrounding circumstances of the instant case, take precedence over hand operated switches. In support of this latter point, the Organization cites Maryland Division Timetable 1b. 2, Special Instructions T-104 and T-93 which read in relevant part as follows:

"T-104-HAND OPERATED SWITCHES

Unless otherwise provided,
hand signal from Operators or
Operator-Switchtenders will govern
movements over the hand operated
switches designated below:

Virginia Ave., Cumberland.....All switches
Yellow signal will govern westward movement
Green signal will govern eastward movement

Proceed hand signal is not required
for trains on Nos. 1 and 2 Main Tracks
moving under signal indication, except
diverging movements into Yard."

"Virginia Ave.

Trains or engines using other than
No. 1 or No. 2 Main Tracks, except
diverging movements from No. 2 Main
Track into the Yard will stop before
fouling switches at Virginia Ave.,
Cumberland, unless proceed signal
is received from the Operator.

Virginia Ave. Switchtender

Switchtenders at Virginia Ave. have
jurisdiction over all movements to
and from Eastbound Engine and West-
bound Engine Lead, all Tracks, Yards
E, C, A, except A2 and no movements
will be made without first receiving
the proper hand signal given by the
Switchtender.

"Crossover Movements Running Tracks	Crossover movements fouling either the Eastbound Running Track, West Running Track, Westbound Engine Lead will first secure permission from the Operator at Baltimore St., ND Tower or Virginia Ave."
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The Organization submits that reliance on hand and light signals governing movements of trains and engines in Cumberland Yard falls within that part of Rule 104-B which reads, "Unless otherwise provided, the normal position for all crossovers is for straight track movement". Thus argues the Organization, Claimant's having left the crossover switch open does not constitute a violation of Operating Rule 104-B, because the hand and light signals is the alternate otherwise provided in the above cited last line of the Rule.

Upon a close and careful review of all the evidence of record, the Board makes the following determinations:

1. Claimant was afforded a fair and impartial hearing.
2. The discipline imposed on Claimant was neither discriminatory, arbitrary, capricious or excessive.
3. There is nothing in the record before us with regard to the facts that would cause us to modify or set aside Carrier's original finding of Claimant's guilt in connection with his responsibility for the subject accident and resultant damage to Company property. As we have said many times in numerous other cases involving discipline, we shall not substitute our judgment for that of the Carrier unless it is proven that Claimant was denied his/her due process rights and where the action taken against Claimant was either discriminatory, arbitrary, capricious or excessive.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1981.

