

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23344
Docket Number SG-23077

John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Southern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

Claim on behalf of J. H. Fox, Signal Foreman, suspended from service for thirty (30) days, due to an investigation held in Gainesville, Georgia on May 9, 1978, with a request that claimant be paid for the thirty (30) days he was suspended and his record cleared." (Carrier file: SG-326)

OPINION OF BOARD: On March 14, 1978, Claimant was assigned as the Signal Foreman of a five (5) member Signal Gang which was engaged in replacing a crossing signal relay case at the at-grade crossing of State Highway 21 and the Southern Main Line which is located near Pineville, North Carolina. However, because the new signal case could not be placed into service at that time ("power lines hadn't been raised"), the Project Engineer, C. L. Davis, who was present at the jobsite, directed Claimant to make a temporary hook-up by running the old wires from the existing case into the back door of the new signal case and then tie it into the circuit with temporary wire. When this particular activity was completed, the new circuits were tested and the crossing signal worked ("the crossing bells rang, and the crossing signal flashed."). Thereupon, the Project Engineer left the job site, but before doing so, he directed Claimant to supervise the remaining final steps of the assignment. Said assignment was completed at approximately 2:30 PM at which time Claimant and his work crew departed for another assignment in Drexel, North Carolina.

The first train to come through the newly repaired crossing was Train No. 73 which did so at approximately 3:45 PM. According to the Train's Engineer, the crossing was made without incident ("the crossing signals flashed and the bell rang"). At approximately 4:20 PM, a second train, Train No. 185-Second, also came through the crossing, but this time the crossing signal did not function properly ("the bells rang but the lights did not flash") and, as a result, the Train struck a tractor trailer which had failed to stop at the crossing. The tractor trailer in turn struck a second vehicle causing an injury to one of the vehicle's occupants.

An investigation of the accident was conducted by Carrier representatives who arrived at the scene at approximately 5:45 PM on that same evening, and it was discovered that some of the wires which had just been installed that afternoon by the Signal Crew "...had been crimped by the door (of the relay case), thereby exposing the wire which overheated and caused the relay contacts to burn out." In light of this discovery, the investigators "...concluded that the burned out relay contacts and the signal failure were directly attributable to the crimped wiring."

Pursuant to the aforesaid investigation, Claimant, who was the employee in charge of the Signal Gang, was charged with "failure to properly perform his duties" and a hearing on the matter was conducted on May 9, 1978. As a result of said hearing, Claimant was found guilty as charged and was assessed a thirty (30) day suspension for failure "...to properly perform his duties as the employee in charge when he permitted the temporary signal wiring to be installed in an unsafe manner which resulted in the signal system malfunction and thus the serious accident."

Organization's position in this dispute is two-fold: (1) that Carrier prejudged Claimant's guilt prior to the conducting of the investigatory hearing; and (2) that Carrier failed to meet its burden of proof herein.

Regarding the first of these two contentions, Organization maintains that the specific contents of Carrier's March 21, 1978 Investigation Notice ("...you are charged with failure to properly perform your duties as Signal Foreman on March 14, 1978 when you permitted the temporary signal control wires to be installed in an unsafe manner which resulted in a serious accident"), "...shows conclusively that Carrier decided before the investigation that Claimant was guilty as charged" (Emphasis added by Organization). Organization alleges that because of this prejudgement "...it was impossible for Claimant to receive a fair and impartial investigation" and that "This reason standing alone is sufficient to justify a sustaining award."

Turning to the second of its contentions, Organization asserts that "...Carrier did not and could not support the instant charge with probative evidence" and that Carrier, therefore, has failed to sustain its requisite burden of proof in this dispute (First Division Award No. 20834; Third Division Awards No. 9216, 14120, 18885 and 19515). In support of this position, Organization maintains that Carrier witnesses' statements regarding the effectiveness of the blocking procedure which was utilized by the Signal Gang were "totally incorrect"; and furthermore that said witnesses had no direct knowledge of whether the relay case was properly blocked/protected by the Signal Gang, whereas Organization's witnesses did have such knowledge and so testified at the investigation hearing.

As its final area of argumentation in this regard, Organization contends that insofar as the crossing signal flashers were working properly when Train No. 73 passed over the crossing approximately one hour and fifteen minutes after the Signal Crew had left the scene, this fact alone is proof that, the relay case was properly protected at the time of the Gang's departure. Given this particular line of argumentation, Organization maintains that whatever might have caused the crossing signal to malfunction between the passing of Train No. 73 and Train No. 185-Second was not caused by any fault or negligence on the part of the Signal Gang and Claimant's suspension, therefore, was improper.

Carrier's position in the dispute is equally as clear and direct as that which has been proffered by Organization. Simply stated, Carrier maintains that: (1) evidence adduced in the investigation proved (Claimant's) guilt of failing to properly perform his duties on March 14, 1978; and (2) the discipline which was imposed was fair and reasonable, and should not be disturbed.

In support of its contention that Claimant failed to properly perform his duties, Carrier maintains that, over and above its conclusive showing that *the damaged wires in the relay case were the direct cause of the accident* which occurred on March 14, 1978, substantial evidence also exists to establish that: (1) the crossing signal worked properly before Claimant directed the closing of the relay case doors; (2) Carrier investigators found no evidence that Claimant and/or Signal Gang blocked the relay doors in accordance with normal procedures; and (3) Carrier's investigation of the scene immediately after the accident revealed that the manner in which Claimant alleges that "he blocked the door would still have resulted in the wires being crimped."

Regarding its second contention, Carrier maintains that its actions in this matter have neither been arbitrary nor capricious, and the Board therefore, must not disturb the discipline which has been imposed. (First Division Award No. 13006; Third Division Awards No. 15828 and 20194). Moreover, Carrier also contends that, given the serious nature of Claimant's infraction, Carrier's imposition of severe discipline upon Claimant was justified; and "...in light of the nature of the proven offense and its possible catastrophic consequences..." the degree of discipline which was administered was very reasonable (Third Division Awards No. 9326, 11775 and 21047).

The Board has carefully read and studied the complete record in this dispute and is unable to find evidence, either in fact or in substance, which would justify the rescission of the penalty which has been imposed upon Claimant by Carrier.

From the outset, Organization's contention regarding Carrier's alleged prejudgment of Claimant's guilt is rejected as being without foundation. The totality of Organization's "proof" in this regard is the specific phraseology utilized by Carrier in its March 21, 1978 Investigation Notice which, according to Organization, "...shows conclusively that Carrier decided before the investigation that Claimant was guilty as charged."

While it is indeed true that prejudgment of an accused prior to the conducting of a fair and impartial hearing, if proven, can be sufficient grounds for the setting aside of disciplinary action, it is equally true that the charge of "prejudgment" cannot merely be asserted, but must be supported by some degree of substantive and creditable evidence. In the instant case, no such evidence has been proffered, and that which has been alluded to by Organization is nothing more than a specific and precise statement which apprised Claimant of the matter which was to be inquired into at the investigation "...and was stated in a way to sufficiently inform him as to the nature of the offense and enable him to prepare his defense." Additionally, the specific words which Organization cites as the basis of its argument in this regard have been completely taken out of context by Organization and these words, by themselves, tend to obscure the true meaning and intent of the Investigation Notice from which they were extrapolated. In such instances, rather than relying upon bits and pieces of evidence and/or testimony, the actual conduct of the hearing itself is viewed as being a more appropriate index of the fairness and impartiality of the investigation, and, in this regard, the transcript of said hearing clearly indicates to this Board that the proper standards of conduct were followed and were met by Carrier as required under Rule 23 of the parties' Agreement. The basis for this particular rationale was articulated most cogently and succinctly by Referee Englestein in Third Division Award No. 13727 when he concluded:

"In respect to the contention that the notice of investigation did not set forth the 'known circumstances' as required by Rule 21, we find that Carrier's letter of September 19, 1963, included such significant information as the date and place of the occurrence, the rules violated, and reference to Claimant's conduct which had necessitated his removal from service at Fargo. Claimant was, therefore, adequately apprised of the nature of the charges so that he could prepare his defense. Moreover, the hearing indicates that he was not taken by surprise when the charges were presented." (Emphasis added by Board.)

As to Organization's second major contention "...that Carrier has failed to meet its burden of proof and therefore forfeits its right to discipline," the Board is as equally unpersuaded by this particular line of argumentation as was the case in the foregoing consideration. Suffice it to say that though the total blame for the Signal Gang's failure to properly perform the disputed assignment cannot rightfully be attributed to any one member of said crew (supervisory or otherwise), and though it is impossible to determine with any degree of absolute certainty the exact manner in which Claimant functioned in the performance of said assignment, there is sufficient evidence available within the record to conclude that: (1) the accident of March 14, 1978 occurred as a result of the crossing signal's failure to operate properly; (2) said failure, most likely, was caused by the improper/inadequate blocking procedure which was utilized by the Signal Gang in temporarily restoring the crossing signal relay case to service¹; and (3) Claimant, in the final analysis, was the employee who was accorded ultimate authority and responsibility for the proper performance of said assignment. Thus the Board concludes that under such circumstances, Carrier's imposition of discipline herein was neither unreasonable, arbitrary nor capricious; was a proper exercise of Carrier's managerial authority; and said determination, therefore, shall remain undisturbed. (Third Division Awards No. 9326, 11775 and 21047).

¹The fact that the crossing signal worked properly when Train No. 73 came through the crossing does not indicate that the signal was properly protected at the time of the Signal Gang's departure since the record adequately demonstrates that the newly repaired circuit was adequate to "energize" the flashers for the first train's passing, but "as the train continued to pass over the circuit, the current flowing through the crimped wires created heat, and the heat continued to increase until it reached the level sufficient to cause the relay contacts to burn out (Carrier's Submission, p. 6; also see Hearing Transcript, pp. 21, 25 and 29).

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: ^a _____ m _____
Executive Secretary

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

