

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23997
Do&et Number SG-24045

Lamont E. Stallworth, 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:

On behalf of **Signalman C. J. Holdren assigned to Signal Crew 139** headquartered at North **Kansas City, Missouri**, who **was** dismissed from **service** as a result of an investigation held on February 1, 1980. **Mr. Holdren** should be reinstated to his former position of **signalman**, reimbursed for all time lost **and** any reference to this investigation be cleared from his **personal** record."

OPINION OF BOARD: On January 21, 1980 Signal **Crew 139** Foreman Shoemaker held a safety meeting with his crew members in their headquarters at starting time. At this meeting the **Claimant** alleged that the signal **bridge** where the crew was working was unsafe to work on when cars were moving beneath it. Foreman Shoemaker called **Signal Supervisor Craig** to advise him of the complaint. Signal Supervisor **Craig** thereupon Instructed Foreman **Shoemaker to inform the crew that they could get off the bridge when cars were pulled north** out of the bowl yard, but that there was nothing unsafe about working on the bridge during the normal humping operations when they had their safety belts on.

Following the meeting, Foreman Shoemaker and the rest of the crew proceeded to the **signal bridge** to work but the Claimant **remained** in the crew's headquarters. **After** a telephone call from the Claimant to the Terminal **Superintendent** complaining about working on the signal bridge **when cars** were being humped, the crew was brought back to the crew headquarters and again the Claimant's complaint was **discussed**.

Signal **Supervisor Craig** again stated that he had no objection to the crew getting off the bridge when cars were being pulled out but that there was nothing unsafe about working on the bridge during the normal humping operations when they had their safety belts on. When Supervisor **Craig** instructed Foreman Shoemaker to take the crew to the job site, Claimant objected and he told Signal Supervisor **Craig**, "You can get f-----."

Signal **Supervisor Craig** then told the Claimant **that** he was not being taken out of **service** but if he was not going to work he was not going to be paid. Claimant then left, heading away from the bridge site. Claimant reported to his crew at **10:30 AM** for work on the signal bridge.

Claimant was cited by notice dated **January 25, 1980** to attend an investigation February **1, 1980**, "for the purpose of ascertaining the facts and determining **your** responsibility in connection with your alleged **failure** to comply with instructions **from** proper authority, **and** your alleged use of **vulgar** language at about **8:30 AM** on **January 21, 1980** at North Kansas City, **Missouri.**"

The investigation was held as scheduled **and Claimant** was found guilty of violating Safety Rules **700, 701, 702 and 702 (B)** **and** notified of such by letter dated February **15, 1980**.

Claimant appealed his **claim** and **contended (1)** that the **Carrier's** notice of investigation **did** not comply with Rule **54 (C)** because it did not "outline the **specific** offense or mention any Rule **violations**"; (2) the Carrier wrongfully denied a request of the Local **Chairman** to sequester the witnesses; and (3) that the discipline was without **just** and sufficient **cause**. **Carrier's** appeals officers declined the appeals.

Carrier maintains, **that** the **investigation** notice sent to the Claimant met the requirements of Rule **54 (C)** in that the **accused** **must** be told only of "specific offense **for which** the hearing is to be **held**." This **requirement** was satisfied in that there was a **reasonably** clear Indicator of the incident or **conduct** to be investigated. The citing of **specific** Signal Department rules is not **mandatory** and need not be as precise as a **criminal** complaint (**Third Division Awards 12898, 16154, 16115, 15027 and 14573**).

Carrier contends that even if the notice was not fully satisfactory, he still had several **days** before the investigation to request **clarification** and he did not do so.

Further the Carrier asserts that the inclusion of **charges** of specific roles violations is not necessary (**Third Division Award 22119, 22663, 20234, 19998, 16816, 16637 and 16121**).

Carrier maintains that **there** is no rule or agreement **which** requires the sequestering of witnesses (**Fourth Division Award 2058, Third Division Awards 14391, 16007 and 19487**).

Further, the Carrier maintains that the **Claimant** **refused** to perform service when instructed to do so by proper authority. Signal **Supervisor Craig** testified that he had instructed the Claimant **to** go to work.

Further the **Claimant** **admitted** to his use of **profane and vulgar** language toward his supervisor. Signal **Supervisor Unze** and Crew **Foreman Shoemaker** corroborated Supervisor **Craig's** testimony concerning his instructions to the crew to go to work and the Claimant's use of vulgar and profane **language**.

Carrier maintains that the **discipline** assessed the **Claimant**, even if it were only for the use of profane and vulgar language, was neither arbitrary nor **capricious** (Award No. 3 Public Law Board No. 1850; Third Division Awards 16948, 17515). The **Carrier** noted that the **discipline** was fully warranted in light of Claimant's **past unsatisfactory** personal record. This record **included a 30-day suspension for refusal to wear a hard hat**, a five-day suspension for failure to report for duty at the **designated** time and place and a **30-day suspension for failure to operate a company vehicle in a safe and efficient manner**.

Organization maintains that (1) the handling of this dispute on the property was procedurally defective and (2) **Carrier's** punishment was **unwarranted**, unjust and Improper.

In regards to procedural defects, **Organization** asserts that the notice of investigation **did** not state which rules were allegedly violated. This constitutes a violation of Rule 54 (C) of the **Signalman's Agreement** which states in part:

"At least **five** calendar days advance **written** notice of the **investigation** outlining specific offense for which the **hearing** is to be held..."

Claimant also contends that Claimant's **representative** requested that the witnesses be sequestered in order to secure a fair and impartial investigation. **The** hearing officer denied this request. Further, Claimant's representative was not allowed to **continue to** question Carrier witness.

The choice of returning to work **under the conditions** set by the supervisor or being removed from **payroll** was given to **Claimant**. Therefore the **Claimant** cannot be charged with being absent **from** duty when he was given a **choice**. The Claimant notes that he was not **on** the payroll during the **period** from 8:00 AM to 10:30 AM and therefore was not being paid when the alleged rule violations occurred. **Therefore the charge** of not following proper instructions is invalid.

Further, the **Claimant maintains** that the **alleged vulgar** word is **nothing more than "shop talk"** that is used often, without fear of being disciplined.

Upon a careful consideration of the record in this matter, the **Board** concludes that Claimant was given a fair and impartial **hearing**. The Board further concludes that there is substantial evidence on the record to support the charge. **The Board** notes that the principle of "work now and grieve later" **is applicable** in these circumstances. **The Board** also notes that the language used by **Claimant** does not constitute "shop talk" in these circumstances. Given **Claimant's past** discipline record the **Board concludes** that the claim must be denied.

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 **Employes** 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: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of September 1982.

