

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24586
Docket Number SG-24575

Herbert L. Marx, Jr., Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: {
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis Southwestern Railway company:

On behalf of Signalman W. R. **Shultz** and Assistant Signalman R. E. Griffin, who were suspended thirty days during June and July, 1981, for pay for all time lost and with all rights unimpaired, and all charges and discipline be removed from their personal records." (Carrier file: 318-53-A)

OPINION OF BOARD: The Claimants are Signalman and Assistant Signalman who bore responsibility for an accident involving a backhoe which they were operating. They permitted the backhoe to be too close to a track and, as a result, it was struck by a moving train.

They were immediately suspended from service. After a fair and thorough investigative hearing, each Claimant was assessed a disciplinary penalty of 30 days' suspension, commencing with the date of initial removal from work.

The Claimants stated at the investigative hearing that they had been warned by their supervisor, a Signal Manager, to avoid working too close to the track. However, there was no flag or other warning device provided to them. The record also shows considerable lack of clarity concerning the direction and supervision given them by the Signal Manager. Each Claimant had little more than two months' service with the Carrier.

In the assessment of discipline there is no showing that these factors were taken into account. **While** the Carrier's judgment may not be faulted in assessing discipline for failure to exercise proper care, the penalty is thus found to be excessive. Claim sustained to the extent that the disciplinary penalties are modified to 15 days; the Claimants shall be made whole for the remaining 15 days.

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

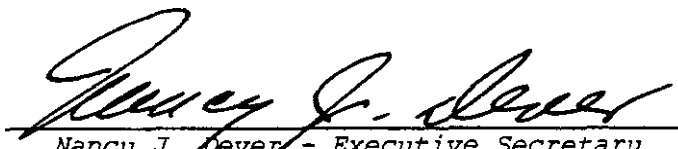
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1983.