

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 24766
Docket Number SG-24151

John B. LaRocco, 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 System et al:

Claim **on** behalf of the following signal employees who were dismissed from service as a result of an investigation held on February 6, 1980, with a request that they be reinstated with seniority rights unimpaired and paid for all time lost.

Claim No. 1, Foreman Robert Carroll - General Chairman file:
SG-153 Carrier file: SG-432.

Claim No. 2, Lead Signalman T. L. Davis - General Chairman file:
SG-154 Carrier file: SG-431.

Claim No. 3, Signalman Robert Johnson, Jr., General Chairman file:
SR-158 Carrier file: SG-434

Claim No. 4, Assistant Signalman A. W. Bustos - General Chairman file:
SR-156 Carrier file: SG-433.

OPINION OF BOARD: This case is the consolidated appeal of the dismissals of four members of a signal gang following an investigation involving all four Claimants held on February 6, 1980. By notice dated January 30, 1980, each Claimant was given written notification of the charges placed against him. **In** summary, Claimant Carroll, the Signal Foreman, was charged with failing to properly supervise the gang. The Lead Signalman, Claimant Davis, was accused of tampering with evidence and conduct unbecoming an employee. Claimants Johnson and Bustos, a **Signalman** and Assistant Signalman respectively, were charged with failure to properly and competently carry out their duties.

To fully understand this case, we must relate the facts in some detail. **On** January 25, 1980, the gang was assigned to install circuit controllers on the Illinois Grain siding at Browns, Illinois. When the gang arrived at the work site, Claimant Carroll observed that the centering device was detached from the siding switch. He brought this defect to the attention of several **gang** members and evidently Claimant Bustos **began** to repair the centering device. To ease the tension on the device, Claimant Bustos unlocked the switch (which **was** properly aligned for mainline movement/ and opened it halfway. When Claimant Carroll noticed Claimant Bustos **working** on the stitch, the Foreman took him off that job and directed Claimant Johnson to finish the work. Claimant Johnson complied, However, after completing the repair, Claimant Johnson left the switch in **an** open position (**for** movement from the mainline into the siding).

Moments later, **eastbound** Train No. 127 came down the mainline at approximately forty-five miles per hour. Immediately before reaching the switch, Engineer Marshall saw a red target and he quickly confirmed that the switch **points** were lined for movement into the siding. He warned his brakeman and put the train in emergency. The train started into the siding and three engines and twenty-five cars derailed. Several crew members, including Engineer Marshall, were injured. Fortunately, the signal gang members were able to run clear of the oncoming train and, thus, were uninjured. Superintendent Mills testified that due to the derailment, the Carrier incurred almost a million dollars of damage to Carrier equipment and shippers' lading.

When Company officials arrived at the scene of the wreck, they promptly ascertained that the switch was locked and lined for the mainline. When they **interviewed** Claimants, none of them informed the Carrier that they had worked on the switch **just** prior to the derailment. Late in the evening of January 26, 1980, Claimants recanted and frankly admitted that they had worked on **the** switch and inadvertently left it in an open position. Despite these admissions, they all disavowed any direct responsibility for causing the derailment. In addition, Claimant Davis conceded that after the derailment, he saw the switch was lined for the mainline with **the** lock lying on a nearby tie. He then locked the switch. When he was first questioned by Carrier officials, he failed to disclose that he locked the switch after the accident. He did so to avoid embarrassing other members of the gang because he mistakenly believed the switch had not **been** a factor in the derailment. All Carrier officials investigating the derailment had been puzzled and confused since they observed the switch securely locked and properly lined for mainline movement though the position of the engines suggested that the train had started to turn into the siding. The Western Division Superintendent had concluded that if Train No. 127 entered the open switch at a high rate of speed, the enormous pressure would push the switch **points** back to normal mainline alignment. However, until Claimant Davis revealed that he put the lock on subsequent to the derailment, the officers were unable to pinpoint the exact cause of the derailment.

Initially, the Organization contends that the Carrier unjustifiably withheld Claimants from service pending the February 6, 1980 investigation. We disagree. In Third Division Award No. 15828 (Ives), involving these same parties, the Board rules that the Carrier **could** reasonably exercise its discretion to **withhold** a charged employee from service pursuant to the express language of Rule 23. The transcript of the investigation shows that all four Claimants were **given** ample opportunity to present all defenses, to explain their actions and to cross-examine the Carrier's witnesses. Indeed, there is little dispute regarding the essential facts. Thus, Claimants received a fair Rule 23 hearing.

To ascertain if each Claimant committed the charged offense, we must evaluate the record to determine if the Carrier presented substantial evidence to prove the charges leveled against each Claimant. At the onset, we note that the derailment was caused by the open siding switch at Illinois Grain. **Therefore**, we must decide, on an individual basis, if each Claimant was responsible for the improperly aligned switch.

Claimant **Davis** held no **responsibility** for the position of switch prior to the derailment but he deliberately tampered with the switch **lock** immediately after the wreck occurred. His foolhardy conduct concealed the true cause of the derailment. Claimant **Davis** locked the switch with **the** specific intent of protecting his fellow gang members. Though he later admitted his misconduct, he had, for a time, effectively thwarted the Carrier's ability to investigate the derailment. Thus, he intentionally tampered with evidence having a direct bearing on the derailment.

Claimant **Bustos** initially opened the switch. Though he apparently did so with his Foreman's permission, he should have informed Claimant Johnson that the switch was open when Johnson later took over the repair task. Also, Claimant **Bustos** should not have moved the switch without first complying with the **applicable** operating rules for safeguarding mainline movement.

Claimant Johnson, who worked on the switch after Claimant **Bustos**, did not realize that Claimant **Bustos** had unlocked and opened the switch. Inexplicably, Claimant Johnson finished the necessary repairs but then left the switch without realigning it for the mainline. However, for several reasons, he recklessly performed his duties. First, he worked within eight feet of the open switch points and so he should have noticed their position. Second, he should have known that Claimant **Bustos** would have to open the switch to attach the centering device. Third, he walked away from the switch without checking its position. A fundamental part of his job was to make certain (after completing his **work**) that the switch was safe for mainline train movement. Since he had relieved a fellow **worker**, Claimant Johnson should have been especially alert for any errors made by Claimant **Bustos**. Claimant Johnson cannot shift the blame for his negligence to other workers merely because they were also responsible for the unsafe condition of the switch. Fourth Division Award No. 3425 (**Eischen**).

Claimant Carroll was responsible for the **work** performed by employees under his command. Claimant Carroll imprudently permitted his workers to open the switch. **His** gang was not even assigned to perform any repairs on the switch. **Once** he allowed Claimant **Bustos** to open the switch, he should have closely supervised his work since the switch repair was far more crucial than installing the controllers on the siding. Claimant Carroll suddenly removed one worker from the switch and substituted another. This lack of continuity without supervision indirectly caused both workers to leave the switch open and unattended. Finally, like the other Claimants, Claimant Carroll impeded the Carrier's inquiry into causes of the accident by withholding pertinent information and denying that the gang had worked on the switch.

We, therefore, find that though no one Claimant was solely at fault, all **four** Claimants were jointly **responsible** for the improper position of the switch. The final issue is whether or not dismissal was the appropriate penalty. Claimants Carroll and Johnson committed such gross negligence that we cannot find any justification for reducing their discipline. The former held ultimate responsibility and the latter had numerous chances to place the switch in its correct position. **Similarly**, Claimant **Davis**' intentional attempt to undermine the Carrier's investigation constitutes deceit and disloyalty. We must uphold his discharge. There is, however a mitigating circumstance which demonstrates that the discipline assessed against Claimant **Bustos** was excessive and unduly harsh.

Though Claimant **Bustos** should have informed Claimant Johnson that the switch was open, he was quickly removed from the job by his Foreman. Claimant Bustos was obligated to comply with his foreman's directive. Thus, Claimant Bustos was less culpable than the other Claimants. Claimant Bustos should be reinstated to service, with his seniority unimpaired but without compensation for time lost.

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 Discipline was excessive as to Claimant Bustos only.

A W A R D

1. Claims of Carroll, Johnson and Davis are denied.
2. Claim of Bustos is sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984

JUN 10 1984