

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 24768  
Docket timber SG-24178

John B. **LaRocco**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Western Pacific Railroad Company:

On behalf of F. J. Falsetti, who was dismissed by letter dated June 28, 1980, for reinstatement to his former position of **TCS** Maintainer, **Tobin**, California, compensation for all time lost, and that his record **be** cleared of any and all notations related to the cause of **his** dismissal.

[Carrier file: GM Case No. **12534-1980-BRS** LC No. BRS-40 hq. Dept.]

OPINION OF BOARD: The basic facts in this case are in dispute. According to the Carrier's Signal Test Foreman, Claimant, a **signal** maintainer, asked the Foreman to help him locate the source of a signal malfunction at Virgilia on May 23, 1980. The Foreman also testified that Claimant admitted that he had placed jumper cables directly from the right track battery to the terminal board when he could not **ascertain** the cause of the problem the day before. Since the jumper cables bypassed the track signal wire, the signal on the dispatcher's console would continuously register clear regardless of the presence of either a train or broken rail on the Virgilia siding. The Foreman removed the jumper cables and the detector relay fell to erase the clear signal. **After** a short inspection, the Test Foreman discovered a broken track wire buried **in** the ballast. He repaired the wire which cured the signal problem. A Maintenance of Way Foreman observed the Test Foreman locate and repair the broken signal wire. There was no evidence that the wire had been previously spliced because it was buried deep in the ballast.

Claimant specifically denies any responsibility for the jumper cables. On the contrary, he testified that when signal trouble occurred at Virgilia on the evening of May 22, 1980, he repaired the damaged wire and left the signal system in **working** order. He did acknowledge that when he accompanied the Test Foreman to **Virgilia** the next day, jumper cables connected the battery and terminal board.

Subsequent to an investigation held on June 11, 1980, the Carrier dismissed Claimant from service.

The Organization **argues** that the Carrier held an untimely investigation and therefore. this Board should summarily sustain the claim. The Carrier sent written notice to Claimant informing him that a formal investigation **would** be held on June 5, 1980. The hearing was **postponed** to June 11, 1980 at the Local Chairman's request. Rule 68 mandates that the Carrier convene the investigation within ten calendar days of either the date the alleged offense occurred or the date management first learned the alleged offense occurred. On the property, the Carrier contended it did not know Claimant had committed any offense until June 2, 1980. However, at the investigation, the Test Foreman clearly stated that he notified the Signal Supervisor of Claimant's alleged misconduct on May 27, 1980. Though the **Test** Foreman did not promptly notify his supervisor of the

incident, an intervening holiday **weekend** probably contributed to the delay in informing management. Since the investigation was originally scheduled within ten calendar days of May 27, 1980, the Carrier met the Rule 68 time constraints.

On the merits, the evidence is substantial, almost overwhelming that Claimant left the signal system at Virgilia in an unsafe and inoperable condition on the evening of May 22, 1980. Despite Claimant's blanket denials, the other evidence in the record conclusively demonstrates that he was responsible for the jumper cables. First, the Test Foreman would not have been at Virgilia but for Claimant's request. Claimant surely would not have asked the Foreman to go to Virgilia unless there was still a problem with the signal system. Thus, the hearing officer could discount Claimant's contention that he completely repaired the **problem** the night before. Second, a reliable witness observed the Test Foreman pull the broken signal wire out of the ballast. Third, Claimant offered no explanation for the jumper cables. He was the last person at the site the previous day and **the** first person (with the Test Foreman! to enter the signal facility on May 23, 1980.

The Organization also argues that the discipline was excessive and unduly harsh. **While** Claimant had been employed by the Carrier for only two years, we agree. He did voluntarily bring the problem to the Test Foreman's attention. Claimant shall **be** reinstated to service, with his seniority unimpaired but without compensation for time lost. However, Claimant should understand that he must strictly comply with all rules. We expect Claimant to competently and conscientiously perform his duties upon his return to service.

**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 discipline was excessive

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** 13th day of April, 1984