

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24776
Docket Number SG-24720

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: {
(Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company

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

Carrier file: K 225-885

(a) Carrier violated the Signalmen's Agreement as amended, particularly the discipline rule (Rule 700) when on May 14, through June 13, 1981, it suspended Signal Maintainer E. L. LaRue thirty (30) actual days from service, without just and sufficient cause and on the basis of unproven charges either before or during the investigation held May 5, 1981. The Carrier violated Rule 700(d) when it did not furnish Vice General Chairman, E. J. Anousakes, Mr. LaRue's representative, with a copy of discipline assessed, as requested by him at this investigation, until May 29, 1981, fourteen (14) days beyond the time limits as provided in the Rule.

(b) Carrier should now be required to make Signal Maintainer E. L. LaRue whole for his lost wages for the thirty (30) days he was suspended, plus any overtime worked by others on his assigned territory and clear his personal record of any reference to this matter..

OPINION OF BOARD: On May 5, 1981, a formal investigation was held to determine responsibility, if any, of Signal Maintainer E. L. LaRue's alleged failure to properly repair, test and inspect his assigned territory on the Little Rock Subdivision on or about April 14 to April 16, 1981. As a result of this investigation the Claimant received notice dated April 13, 1981 that he was being assessed an actual suspension of thirty (30) days. After this case was appealed on property up to and including the highest Carrier Officer designated to hear such appeals it is now before the National Railroad Adjustment Board.

The instant case centers on whether the Claimant had adjusted a switch's circuit control in his territory in accordance with MoFW Rules when he made repairs on the switch on April 14, 1981.

While making an inspection trip on April 16, 1981 Carrier officers discovered that the switch in question could be opened beyond the normal one-fourth inch (up to one inch) before displaying the proper signal to oncoming traffic. In hearing, the Claimant testified that he had made repairs to the switch on April 14, 1981 because of exception taken by an FRA inspection on April 8, 1981. Yet Carrier witnesses testified that there was an accumulation of dirt on the nuts that adjust the circuit thrower in the circuit control box. Since this was the case, and since the Claimant was the last known person to perform repair work on the switch prior to April 16, 1981, it appears less than credible that an adjustment had been made two (2) days prior to this latter date. After the adjustment was made on

April 16, 1981 by the Claimant when he had been called to do so by supervision after the maladjustment had been discovered testimony at the hearing revealed that there were then markings on the nuts. Further, Organization Vice General Chairman **testified** in hearing that it was possible to change a switch point lug nut, which is what the Claimant had been ordered to do after the April 8, 1981 FRA inspection, without adjusting the circuit controller, and no other evidence nor reasons were forwarded in the record to account for the lack of proper adjustment of the switch on April 16, 1981 if it had been adjusted as alleged by the Claimant.

An accepted maxim in railroad discipline cases is that of substantial evidence in support of Carrier's action. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (**Consol. Ed. Co. vs Labor Board** 305 U.S. 197, 229). A review of the record of the instant case shows that the test of substantial evidence has been met. The Board will not therefore, disturb Carrier's determination in this matter.

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 not violated.

A W A R D

Claim denied.

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

JUN 1