

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24777
Docket Number SG-24721

Edward L. Suntrup, Referee

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

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

(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 Maintenance Foreman, E. N. **McKinnon**, thirty (30) actual days from service of the Missouri Pacific Railroad, without just and sufficient cause and on the basis of unproven charges either before or during the investigations held May 4 and 5, 1981, at North Little Rock, Arkansas. Carrier violated Rule 700 (d) when it failed to furnish Mr. **McKinnon's** representatives with a copy of discipline assessed notice number 73, as requested by them at the investigation, as provided in the Rule. Vice General Chairman E. J. **Anousakes** received a copy of the notice May 29, 1981, fourteen days beyond the time limits provided in the Rule 700(d). The **General Chairman** to this date has never received a notice of discipline assessed, as requested on page 28 of the transcript of the investigation.

(b) Carrier should now **be** required to make Signal Maintenance Foreman, E. N. **McKinnon** whole for his lost wages 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. [Carrier file: K 225-8841

OPINION OF BOARD: On May 4, 1981 a formal investigation was held to determine responsibility, if any, of Signal Maintenance Foreman E. N. **McKinnon** in connection with his alleged failure to properly inspect and test the signal system assigned to his care which resulted in the failure of 69 A track relay at Little Rock Subdivision. This failure was discovered by the Carrier on April 8, 1981. The Claimant was jointly charged with Signal Maintainer **H. P. Heard** and Relief Signal Maintainer R. G. Young for this incident. By notice dated May 13, 1981 Claimant **McKinnon** was assessed a **thirty (30)** day actual suspension for his alleged guilt with respect to this incident, as well as for his alleged guilt with respect to another incident before the Board which was denied by the Board in Award No. 24776 which will be discussed below. All claims were handled separately and after the one herein 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 record before the Board shows that the Claimant has nine (9) Signal Maintainers working under his jurisdiction and that his territory is large. In addition, testimony presented during the hearing on May 4, 1981 shows that the Claimant's responsibilities are extremely diverse: he is **required** to deliver company materials and to work on construction projects, and he is often with the Signal Supervisor. Further, because of the turnover of Signal Maintainers, the

Claimant must sometimes work territories other **than** that which is under his jurisdiction as Signal Foreman. It does not appear justifiable to the Board to assess discipline against Signal Maintenance Foreman **McKinnon** for work allegedly improperly performed by the Signal Maintainers under his charge since it does not appear reasonable to expect him to be with all of the Signal Maintainers all of the time. Carrier has not produced sufficient substantial evidence here to warrant conclusion that Claimant himself was responsible for the track relay failure at bar.

The merits of the instant case also relate to the hearing transcript and supporting materials already studied by the Board under Carrier file K-255-885, Award No. 24776. Claim by Signal Maintainer E. L. **LaRue** in that case was denied by the Board on the basis of substantial evidence showing by the Carrier. In the instant case, however the Board rules that here too the thirty (30) day actual suspension assessed the Claimant for this incident, along with that at bar was without reasonable and justifiable cause. During the joint hearing held on May 5, 1981 the Claimant testified that his only knowledge of the incident relative to Award No. 24776 was **heresay**. Nothing in the record of the hearing transcript, or in subsequent information exchanged on property, contradicts this.

Signal Maintenance Foreman E. N. **McKinnon** shall be made whole for the thirty (30) days he was suspended and that his personal record be cleared of any reference to these matters. **Claim** for additional damages is 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 **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 13th day of April, 1984