

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George V. Boyle, Referee

Award Number 24785  
Docket Number SG-24574

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Inc.:

On behalf of Mr. K. L. Hays, Signal Maintainer, for all pay lost as a result of a fifteen-day suspension (January 3-17, 1981) following investigation held on November 20, 1980, and that any reference to this investigation be cleared from his personal record. (General Chairman file: B-81-245, Carrier file: SI 81-5-21)"

OPINION OF BOARD: The Claimant is an employe of 28 years service with an unblemished record. On November 10, 1980 he was patrolling track to locate trouble on a hot box detector line near Toston, Montana. Ahead of him, proceeding in the opposite direction, a Track Inspector saw the Claimant's motor car headed toward him. The Track Inspector stopped his car, attempted to reverse direction, stalled the car and then had to jump to avoid injury as the Claimant's vehicle collided with the stalled car.

After notice and hearing the Claimant was assessed a suspension of 15 days "for violation of Rule 80 of the Rules of Maintenance of Way - Operating Department".

The Employes, on behalf of the Claimant, assert that:

1) The investigation notice did not outline a specific offense and therefore violated Rule 54-C.

2) There were mitigating circumstances in that (a) the rail was frosty and greasy, (b) the Claimant's attention was upon sparks on a pole just before the collision, (c) the terrain was an obstructing factor (d) neither car was equipped with a strobe lite or BN radio.

3) Claimant had not been notified of the presence of others on the track.

4) The discipline meted out was harsh and unjust.

Treating these allegations in order:

1) The kind of notice given was unremarkable and completely proper.

2) While each of the factors cited may be true they in no way relieve the Claimant of his responsibility to observe the provisions of Rule 80 which read as follows:

"When operating track cars and on track equipment, a sharp lookout must be maintained to the front, side and rear. Where force will permit, an employee shall be assigned to maintain a lookout to the rear."

Given these circumstances the Claimant should have been motivated to exercise caution and due care to avoid such incident as occurred.

3) With regard to notification, the Claimant testified:

"Q. ... Mr. Hays, did you receive notification from the CTC Dispatcher at the time you received the permit that there were other motor cars on the track in the area where you had authority to move?"

A. Yes."

Thus he was aware of other vehicles in the area and should have exercised greater care.

4) The failure to observe Rule 80 resulted in damage to the vehicles involved and injury to the Claimant. It could have resulted in even more serious consequences and should not be treated lightly. The Claimant was guilty of the offense and properly disciplined. While a disciplinary penalty is fair, in view of the Claimant's long unblemished record, fifteen (15) days seems excessive for a first offense and accordingly the Board will reduce the penalty to five (5) 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 Employes involved in this dispute are respectively Carrier and Employes 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

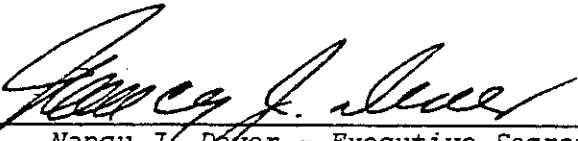
Claim sustained in accordance with the Opinion.

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By Order of Third Division

ATTEST:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984