

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25039
Docket Number **SG-25126**

M. David Vaughn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) Carrier held an investigation on Asst. Mtnr. **Mr. B. Warrington**, on April 27, 1982, in **violation of** Rule 53 of the current Signalmen's Agreement dated January 1, 1982, as amended, and dismissed Mr. Warrington from service April 30, 1982.

(b) Carrier now be required to clear **Mr. Warrington's** record and return him to service with all lost wages." (Carrier file: #D-9-17-56/

OPINION OF BOARD: Claimant B. Warrington was employed by the Carrier as an Assistant Signal Maintainer. On April 23, 1982, he was assigned by his Lead Signal Maintainer the job of removing a frozen bolt from a front rod, using a gasoline-engine powered grinder. Claimant was to perform the work alone while the Lead Maintainer went to obtain some needed parts. Claimant was instructed to keep a lookout for approaching trains, including train number 42, which Claimant was told by the Lead Maintainer was due in a **short** time, and to work facing oncoming rail traffic.

Despite his instructions, Claimant failed to keep the requisite lookout, **and**, indeed, was working with his back to oncoming traffic and in a kneeling position. Train 42, unseen by Claimant until it was virtually on top of him, struck and destroyed the powered grinder. It apparently came very close to striking Claimant as well. The train sounded its air horn as it approached. but Claimant did not hear it, apparently because of the noise of the grinder.

The Carrier conducted an investigation of the incident and, following the investigation, dismissed Claimant for failure to properly clear the track for the train. The assessment of discipline although not the Notice of Investigation cited Rules A, M and Rule 219 of the Carrier's General Regulations and Safety Rules as having been violated by **grievant**. Rule A requires, in relevant part, that **employees** be conversant with and obey the Carrier's rules. Rule M states in relevant part:

"Employees must exercise care to prevent injury to themselves or others. *** Employees must expect the movement of trains, engines, cars or other equipment at any time, on any track, in either direction. ***"

Rule 219 states in relevant part:

"Employees whose duties require them to work near main tracks . . . and similar places, must at all times be on the alert for moving engines, cars or trains..."

The facts clearly show that Claimant violated the rules cited. The incident, accident and near-injury speak for themselves. Claimant asserts that he assumed the bent-over position facing away from the direction of traffic because it was necessary to **peform** the work. That explanation simply overlooks the primary responsibility each **employee** has for performing his job safely. Claimant asserts that he did not have a timetable and did not know when train 42 was due. That assertion is contravened by the testimony of the Lead Signal Maintainer, but even if it were true, would not excuse Claimant from his responsibility to be alert for oncoming trains.

The April 23rd incident was far from Claimant's first involvement with discipline. Between the time Claimant entered service with the Carrier in September of 1979 and his dismissal in April of 1982, Claimant received a total of five letters of reprimand and 105 days of suspension. His violations included sleeping on duty, lateness and absence, failure to wear safety gear, all repeated violations. Claimant had returned from his most recent suspension only 18 days prior to the April 23rd incident. In short, Claimant's record affords no basis to mitigate the discipline imposed.

The Organization argues that the Carrier's Notice of Investigation was defective because it failed to state a specific rule which the Carrier alleged to have been violated. Such a recitation in the Notice is not required, nor would it make sense to have it included, since the purpose of the investigation is to ascertain which, if any, rules were violated. See Third Division Awards 23997 (**Stallworth**, Referee.), 24176 (**Fishgold**, Referee). What is required is that the Notice be fairly couched to give Claimant and his Organization notice of what is being investigated with sufficient specificity that they may prepare their defense. The Board concludes that the Notice here was sufficiently specific and affords no basis upon which to overturn the Carrier's action.

The Organization also asserts that the investigation itself was not fair and unbiased and that the conduct of the hearing was such as to intimidate Claimant and prejudice his defense. It is apparent from a reading of the transcript that the investigation which **was** conducted by the Carrier official was hostile, perhaps unnecessarily so. There appears little point to force Claimant to read into the record the text of the rules the Carrier is alleging he violated. However, neither Claimant **nor** his Organization cite any prejudice to their case on the merits which resulted from the conduct of the hearing. Indeed, the facts of the incident seem basically agreed-upon. The arguments which flow from those facts are appropriately handled, and here were handled, in the submissions of the parties. The Board finds nothing in the conduct of the hearing to warrant overturning the Carrier's action.

Based upon the record in this case and all the evidence and submissions of the parties, the Board cannot find that the Carrier acted in either a capricious or arbitrary manner when it dismissed Claimant. It is the conclusion of the Board that there was substantial evidence to support the Carrier's action. Accordingly, the claim must be 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.

