

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25176
Docket Number SG-24729

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(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 May 1, 1964 Signalmen's **Agreement**, as amended, particularly the discipline Rule 700, when it suspended Signal Maintainer H. P. Heard thirty (30) days actual without just and sufficient cause and on the basis of unproven charges either before or during the investigation held May 4, 1981. Claimant was not charged on any specific day, month or year, in connection with his reported failure to properly inspect and test signal system assigned to his care, that resulted in the failure of 69A track circuit relay at MP (389+10) Little Rock Subdivision failing to de-energize with a shunt of 0.06 ohms resistance placed across the rail of the track circuit at the clearance point of switch located MP 388+44.

(b) Carrier should now be required to make Signal Maintainer H. P. Heard whole for the thirty (30) days he was suspended in line with his Monthly Rate of Pay and clear his record of the charges, as provided in Rule 700(f) since the charges against him were unproven, and account of violation of Rule 700/d) by the Carrier. [Carrier file: K225-886]

OPINION OF BOARD: The Claimant was employed as a Signalman for thirty years at the time this grievance arose. It is one of his duties as a Signalman to maintain the necessary level of resistance in the track circuit so that the relay will display a proper signal to oncoming trains. The level of resistance is tested by placing a shunt of 0.06 ohms resistance on the track and determining if the track is de-energized.

On January 8, 1981 the Claimant made a shunt test of 69A track and obtained a meter reading of zero. He did not visually check the relay. From January 8 until March 16, when he left for a three-week vacation, the Claimant did not again test 69A track. He returned from vacation on April 6, 1981. On Wednesday, April 8 an FRA Inspector performed a shunt test on 69A track and visually inspected the battery case, finding the relay in an energized position.

After an investigation, the Carrier found that the Claimant failed properly to inspect and test the signal system under his care, which inaction thus resulted in the failure of 69A track relay to de-energize during the shunt test on April 8, 1981. The Carrier imposed a thirty-day suspension. The claim protests the suspension as unwarranted, and it seeks reimbursement.

In support of its determination, the Carrier maintains that the Claimant's failure to visually check the relay during the January 8 shunt test was the cause of the relay failure. It stresses that a zero meter reading was unreliable. In addition, the Carrier asserts that no other persons or conditions, such as weather or ballast, could have caused the failure after January 8. If there were such conditions, it says, the Claimant was negligent in the performance of his duty by failing to recognize and correct them before the FRA shunt test on April 8.

The Organization's main contention is that the Carrier has failed to point to any specific action or inaction by the Claimant which could reasonably establish improper performance of duty on his part. The Organization maintains that the Claimant correctly performed the January shunt test and conscientiously performed his duties between that test and the **FRA** test on April 8. The Organization also alleges several procedural irregularities, including a charge that the Carrier violated Rule **700(d)** by not sending a copy of the investigation transcript and a notice of discipline imposed to the Claimant's representatives within ten days of the hearing. A charge was also made that the investigation was unfair and partial.

Upon careful review of the entire record, the Board concludes that the claim must be sustained. There is not substantial evidence to warrant a finding that the Claimant failed to properly perform his duties; nor is there substantial evidence to indicate that the failure of the relay found in the **FRA** test could only have been the result of a breach of duty by the Claimant.

There is no basis in the record for an inference that the Claimant caused the failure of the relay by his action or failure to act. There is no testimony whatever that a zero meter reading during a shunt test is unreliable, nor is there convincing evidence that a visual check of the relay is necessary upon obtaining a **zero** meter reading. Rule 604 does not require a **visual check** as a matter of course. The Claimant credibly and reliably testified from his 30-year experience that a meter reading is the standard way of checking the circuit and that a reading of zero is within the acceptable range.

Moreover, no acceptable reason has been shown why the Claimant should have made a further test of 69A track between January 8 and March 16. There is no evidence to show that changing conditions which could have affected the track circuit occurred during that period. Aside from speculation, the only evidence of conditions which would have affected the readings, such as the removal of the temporary roadway., were shown to have occurred while the Claimant was on vacation. With regard to the need for the Claimant to check the track circuit immediately upon return from vacation, it is reasonable to observe that if the Carrier itself did not consider it necessary to make a check immediately upon removal of the temporary crossing, then it could not fairly blame the Claimant for failure to do so. The Carrier has not been able to credibly demonstrate that other persons or conditions could not have been the cause of the relay failure on April 8. Accordingly, we must sustain the claim.

We do not accept the Organization's procedural contentions. While the procedural provisions of the Agreement should be honored, the failure to do so in all instances is not necessarily fatal. It has not been shown that the delay in furnishing the transcript and notice of discipline was in any way prejudicial to the Claimant's case, either in terms of fairness or his ability to pursue the grievance. No specific allegations of bias were pointed out in the conduct of the investigation and no indication of bias appears on the record. The errors in the transcript of the investigation are minor and do not render it an inaccurate record of the proceedings. The **Claimant** shall be **reimbursed for** all wage.5 lost as the result of the suspension.

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

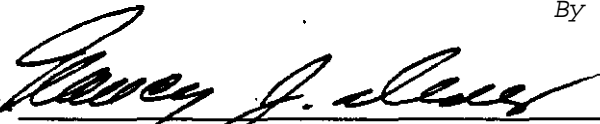
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1984