

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25229
Docket Number SG-25476

James R. Cox, 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) Claim **on** behalf of Signal Maintainer Arthur **F.** Newman, dismissed from carrier service as a result of investigation January 14, 1983.

(b) Carrier should now be required to reinstate Mr. Newman to his former position as Signal Maintainer at Austin, Texas, and make him whole for wages and benefits lost as a result of his dismissal.

OPINION OF BOARD: Claimant Arthur Newman, a Signal Maintainer for **five** years, **was** dismissed from the Service for violation of various Carrier Rules and Regulations. His January 14, **1983, dismissal** had been preceded by a December 27, 1982 demotion after certain maintenance omissions detailed below were detected.

While the Board recognizes that Rule 700(a) precludes disciplining or dismissing an employee from service without an investigation, the Rule has no applicability when, as in the present case, there is evidence of widespread failure to perform assigned duties coupled with an adverse effect upon public safety.

Claimant acknowledged that he had verbal instructions to check highway grade warning devices once a week but maintained that he was only to inspect the water level of batteries **"as needed"**. Company rules indicate that batteries should be checked once a month and a previous provision required bi-monthly inspections.

The evidence, largely uncontested by Claimant, clearly established that, despite numerous verbal warnings, Claimant had repeatedly failed to properly maintain equipment for which he was responsible. The Carrier experienced train delays more frequently in his territory than in the jurisdictions of other employees. Claimant had more trouble calls than other Maintainers. Signal lenses were repeatedly found to be dirty and batteries and crossing equipment had not been properly maintained.

The Charge focused on the signal at milepost 188.01 on the Austin Subdivision of the Palestine Division where records, for which Claimant was responsible, showed that batteries there had not been checked for 22 months. When the signal system failed with the power turned off during an on-site inspection, Newman conceded that the cause was "inadequate battery maintenance". **In** addition to the lack of water, the batteries were dirty with corrosion on the terminals.

A second major concern of the investigation involved the crossing signal at **Steck** Lane. There the battery was found to be so low that, without power, neither the relays nor the lights would function. The last inspection date was 17 days prior to the check, although Signal Maintainers were to inspect all crossing signals weekly.

There is no basis for any mitigation of discipline. Claimant does not deny either prior warnings to check flashers or the numerous defects and examples of nonfeasance associated with his work previously found, not only by Carrier Supervision, but in January, 1981, by an FRA Inspector. In Claimant's territory, lenses for which he was responsible were repeatedly found to be dirty, cases filthy and batteries without maintenance. In addition, rail connections had not been properly maintained, and circuits were improperly battered.

Claimant failed to offer any credible denial of the Carrier's evidence except to claim that he had asked for lead-type batteries in January, 1981. His requisition was denied by Supervision on the basis that Claimant had other batteries available he could have used.

Supervision pointed out numerous examples of poor maintenance to Claimant who offered no rebuttal. The egregious misconduct of Claimant set forth in the record of this case occurred despite unsuccessful Carrier efforts to correct and improve his performance.

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 31st day of January 1985.

