NATIONAL RAILROAD ADJUSTMENT BOARD'

Award Number 25303

THIRD DIVISION

Docket Number SG-25310

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Seaboard System Railroad'

STATEMENT OF CLAIM: Claim of the General Chairman of the Brotherhood of Railroad Signalmen on the former Seaboard Coast Line Railroad:

On behalf of Mr. R. B. Thomas, who was suspended thirty days August 30 through September 28, 1982, each date inclusive, for all rights, benefits and loss of pay. [Carrier file: 15-47 (82-1038)]

OPINION OF BOARD: On August 5, 1982, the Claimant was notified to attend a formal investigation on August 10, 1982, to develop facts and place responsibility, if any, in connection with alleged violation of the first three paragraphs of General Notice; Rules B and 1181 of the Operating Rules; Signal Instruction Letter No. 11 and 12, and the Supervision's instructions accompanying Letter No. 12. After the hearing was held as scheduled the Claimant was notified on August 19, 1982, that he had been found guilty as charged and that he was being assessed a thirty (30) day actual suspension to run from August 30, 1982, through September 27, 1982, inclusive.

The Claimant was specifically charged with falsely energizing an XR Relay by means of two unauthorized clip jumpers at the highway signals at Lake Shipp Drive, Winter Haven, Florida on July 27, 1982. The record shows that on or about 5:00 P.M. on July 27, 1982, a severe storm occurred in and around Winter Haven, Florida and as a result of this a number of highway crossing signals in the area did not function properly. The Assistant Supervisor of Communications and Signals at West Palm Beach then instructed the Claimant, and one other Signal Maintainer who was working at that time, to check the highway crossing signals under their jurisdiction. According to the testimony of this Assistant Supervisor, he instructed the Claimant to 'repair those he could repair without consuming too much time because we were about to go on the (Hours of Service) law, and that (on) those that couldn't be repaired to tie up the gates, leave the lights flashing continuously, and (to) notify the dispatcher.. These instructions were issued between 8:30-9:00 P.M., When checking the crossing at Lake Shipp Drive on the morning of July 28, 1982, the Assistant Supervisor found the XR Relay of this signal falsely energized by two clip jumpers in the signal case with the result that the "crossing protection was out of service because the lights would not flash and the gates would not come down'. The Assistant Supervisor specifically checked the crossing in question early on the morning of July 28, 1982, because an FRA Inspector had noticed that "the crossing was dark with no protection*.

During the hearing the Claimant testified that he had received instructions on the evening of July 27, 1982, from the Assistant Supervisor to "tie the gates up", but he allegedly understood this to mean to use the unauthorized jumpers. He further testified that he did not hear the Supervisor tell him to "leave the lights flashing". This Board has gone on record numerous times to the effect that it cannot set itself up as a trier of fact when it is a question of conflicting testimony. So long as the testimony of a Carrier's witness is not so clearly devoid of probity that its acceptance would be per arbitrary and unreasonable, the Board may not substitute its judgment in cases of this type (Third Division Awards 16281, 21238, 21612). The Claimant testified that he was familiar with the Rules and Instructions at bar, including Signal Instruction Letter No. 12 wherein it is stated that the use of unauthorized jumpers is prohibited and Letter No. 11 wherein it is stated that under no circumstances will jumpers be left without authority of Supervisor C&S.

In discipline cases it is incumbent upon the Carrier to show by means of substantial evidence that a discipline is merited. The record evidence shows that the Carrier has herein met that burden and the Board will not disturb the Carrier's determination in this matter.

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 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 28th day of February 1985.