

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Award **Number** 25515  
**Docket** Number X-25671

**M. David Vaughn**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(**Soo** Line Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the **Soo** Line Railroad Company:

Carrier file: 900-16-A-56

On behalf of Messrs. D. **Stemen**, if. **Krog**, M. Manska and **H. Blaine**, who were suspended 15, 60, 30, and 30 days, respectively, and **Stemen** removed from foreman position, for their alleged responsibility for a train making an emergency brake **application** March 23, 1983.

OPINION OF BOARD: Claimants were employed by the Carrier as part of a signal crew. On March 23, 1983, Claimants were assigned to perform work which required that a turnout located on the main line be moved to the reverse position, that is, the closed position for trains approaching from the trailing point direction.

Claimant Foreman **Stemen** was assigned responsibility for the work. He did not inspect the work or ensure that no hazardous situation had been created by its performance. Claimant Signalman Blaine was directly in charge of the work and of Assistant Signalmen Manska and **Krog**. Claimant Blaine did not inspect the work following its completion, nor did he ensure that the performance of the work had created no hazardous situation. Claimant Manska performed that part of the work which included throwing the switch. Claimant Krog worked with him on the project. He was present during the work performed by Manska, but failed to prevent the creation of a hazardous situation.

At the conclusion of the work, the turnout was left in reverse position, and a train approaching from the trailing point direction avoided running through the closed turnout and possibly **derailing** only by an emergency brake application.

After notice to Claimants, the Carrier conducted an investigatory hearing concerning the incident and, based on the results of that hearing, suspended Claimants for the periods cited in the Statement of Claim. Claimant **Stemen** was, in addition, disqualified from his position as Foreman.

The **Organization** filed claims on behalf of the four Claimants. The parties were **unsuccessful** in resolving the claims through the steps of the grievance procedure, and the claims were brought before this Board. The parties thereafter agreed on disposition of the claim of Claimant **Stemen**. It has been withdrawn; and it must be, and hereby is, dismissed.

With respect to the remaining three Claimants, the Organization asserts that, since the notice of discipline was not received until **more** than ten days following the hearing, it is untimely and the claims must, therefore, be sustained. The Organization's argument in this regard must be rejected. Board precedent is clear that the controlling date for determining timeliness is the date of issuance of the notice, that is, the date it was sent. See, e.g., Third Division Awards 22277, 13219 I'...notice of the decision must be dispatched within the time limit in such manner as may reasonably be relied on to actually get the notice to the employe, and ...prima facie evidence of compliance with the rule stems from the date the notice is sent, not the date it is received.") 11575, 10490. Here, the Carrier sent the notice by mail on April **8th**, the 10th day following the March 29th hearing. The Board holds that the notice was not untimely.

The Organization also asserts that the claims must be sustained because Claimants were not afforded a fair hearing in that the Carrier representative passed notes to the Hearing Officer during the hearing and the Bearing Officer was biased against Claimants. The record indicates no objection was raised by the Organization at the hearing to the alleged note-passing. The record does not indicate that the hearing was not conducted in a fair and impartial manner within the standards required by the Board. See, e.g., Third Division Awards 25187 and 25039. Under such circumstances, the conduct of the hearing does **not** afford reason to set aside the Carrier's actions.

With respect to the merits of the claims, the Organization argues that the discipline was arbitrary and excessive in that the Signal Engineer in charge and one Signalsman on the Crew were not disciplined at all and that the Assistant Signalmen were disciplined even though they were **employees** in training and had not been trained specifically in the task they were assigned. The Board **cannot agree**. The treatment of the non-bargaining unit employe is not before this Board, and the Signalsman who was not disciplined does not appear to have had any involvement in the work which resulted in the safety violation. What is clear is that each **remaining** Claimant was assigned to the work and failed, in the case of Claimant Manska, to ensure that the turnout was returned to an open and safe position at the conclusion of his work, in the case of Claimant **Blaine**, to inspect the work at its conclusion for safety, and, in the case of Claimant **Krog**, to ensure that the project on which he was working was completed without the creation of any hazardous condition.

Safety is of paramount importance in the railroad industry. Each employe shares responsibility for the safe performance of his work and, with respect to matters within his knowledge and control, for the operation of the railroad. Leaving a turnout in the reverse position following the completion of work or allowing it to be so left is a violation of common sense as well as safety rules. The Carrier was warranted in treating the violation as serious and disciplining each employe involved in the incident. Since the degree of discipline is in at least rough proportion to the degree of culpability of each Claimant, the Board cannot conclude that the penalties were arbitrary.

Accordingly, the claims of **Blaine**, **Krog**, and **Manska** must be, and they hereby are, 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;

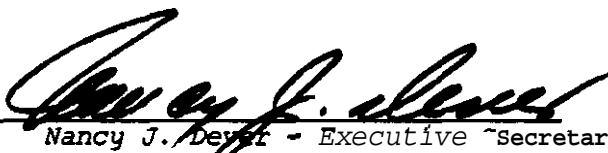
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim disposed of in accordance with the Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1985.