

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 25609
Docket Number SG-24199

Referee **Mrtin F. Scheinman**

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Central of Georgia Railroad Company

STATEMENT OF CLAIM Claim of the General Committee of the Brotherhood Of Railroad Signalmen on the Central of Georgia Railroad Company:

"On behalf of Signal Maintainer C. R. Grace for all time lost while suspended (ten working days, **12:01** a.m. April 28, 1980, to midnight **May** 9, 1980) and that his record be cleared of investigation held on April 14, 1980."

[General Chairman file: CG-53. Carrier file: SG-4411

OPINION OF BOARD: At the time this dispute arose, Claimant, C. R. Grace, held a position as Signal Maintainer at Leesburg, Georgia. In the Spring of 1980, an inspector for the Federal Railroad Administration issued a report which indicated that a switch circuit controller on Claimant's territory was not in proper adjustment, and that the track circuit would **not** shut down when the hand-throw derail was removed from the derail position.

As a result of this report, Claimant was ordered to appear for an investigation in connection with the following charge:

"Signal and train control inspection reports **#45** and **#47** filed by **FRA** Inspector G. V. Hoffman on March 25 and 26, 1980, cites violation of **DOT** Rules 236.51 at MP **J** 286.6, Leesburg, GA, and Rule 236.6 at MP **J290.7, Centry, GA.**

"As a result of this inspection you are charged with failure to comply with the Department of Transportation's Rules, Standards and Instructions for Railroad Signal Systems, Rule 236.51 (track circuit requirements) and Rule 236.6 (hand-operated switch equipped with switch circuit controller), and Volume 1, Southern Railway System, Communications and Signal Department, Rules and Standards, TS-103 (shunt test) and Ms-1911.

"An investigation of these charges will be held at **11:00 AM**, April 10, 1980, at the Americus Hotel, Americus, GA.

"You are directed to be present for this investigation and you may be represented as provided in the Agreement with the Brotherhood of Railroad Signalmen."

The investigation was held on April 14, 1980. On April 28, 1980, Carrier officials telephoned Claimant to **inform** him that he had been suspended for ten days. In addition, on April 26, 1980, Claimant received a letter dated April 23, 1980 and postmarked April 24, 1983. The letter confirmed his ten day suspension.

The Organization appealed Carrier's suspension of Claimant. Carrier denied the appeal. Thereafter, the ~~claim~~ was handled in the usual manner on the **property**. It is now before this Board for adjudication.

The Organization contends that Carrier failed to timely notify Claimant that he was suspended. It points out that Claimant received the telephone call on April 24, 1980, eleven days after the investigation. In addition, Claimant received written notice of his suspension on April 26, 1980, thirteen days after the investigation. Rule 50(b) of the Agreement provides that, "A decision will be rendered in writing within ten days after completion of the investigation and hearing." Thus, the Organization argues that Carrier violated Rule 50(b) when it notified Claimant more than ten days after the conclusion of the investigation that he had been suspended.

On the merits, **the** Organization argues that Claimant had a very heavy workload. He was assigned to cover a 165 mile territory. In addition, he was required to perform construction work. Under these circumstances, **the** Organization suggests, Claimant simply did not have enough time to perform his inspections in a detailed, thorough manner. Therefore, the Organization reasons that Claimant was improperly suspended. Accordingly, it asks **that** the claim be sustained on its **merits** as well as on procedural grounds.

Carrier, on the other hand, insists that it was justified in suspending Claimant. It maintains that he was timely notified of **its** findings. In addition, Carrier avers, Claimant was properly found guilty of failing to conduct necessary inspection on March 25 and 26, 1980. **Therefore**, Carrier asks that the claim be rejected in its entirety.

A careful review of the record evidence convinces us that the claim must fail. This is so for a number of reasons.

First, the record evidence reveals that Claimant was timely notified of Carrier's decision to suspend him. Rule 50(b) provides **that** decisions must be "rendered" within ten days of the hearing. "Rendered" does not mean received. It means that Carrier must take appropriate steps to send the decision to Claimant within ten days of the investigation. Carrier did just **that** here. It deposited **the** decision in the U.S. Mails **no** later than April 24, 1980, or ten days after the hearing. The postmark of April 24, 1980 establishes this fact. Prior **awards** of this Board are consistent with this finding. (See, for example, Awards Nos. 21179 and 12001.) Carrier cannot be held accountable for the failure of the Postal Service to deliver the notice within the ten day period. By mailing the notice **no** later than April 24, 1980, **Carrier** clearly **complied** with Rule 50(b).

As to the merits, the record contains substantial evidence of Claimant's failure to conduct the required inspections. Claimant **acknowledged** at the investigation that he did not perform the derail inspection at the north end of **Leesburg** in accordance with instructions given him. Accordingly, Claimant clearly violated appropriate Carrier rules here. In addition, there is no showing that Claimant's construction work made it **impossible** for him to conduct the required inspections in an appropriate manner. **Furthermore**, if Claimant believed that he was unable to do these tests, he should have so informed his supervisors. He did not. Instead, he indicated on his "**Record of Test & Inspection**" form that he had performed **the** appropriate tests.

Carrier has conclusively established Claimant's guilt of the charges. Accordingly, and for the foregoing reasons, the claim must fail.

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

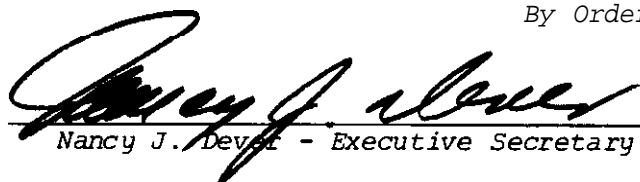
That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.