

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25963

Docket Number SG-25757

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Chesapeake and Ohio Railway Company (Pere Marquette District))

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pere Marquette District of The Chesapeake and Ohio Railway Company that:

(a) Carrier violated the parties' Agreement, particular Discipline Rule 701, in that (1) Mr. Valencia was not charged 'within ten (10) days of the company's knowledge of the alleged offense' and (2) without prejudice to that position, the discipline administered in this case is excessive for the offense for which charged.

(b) As a consequence of such action, Carrier be required to make Claimant E. L. Valencia whole for wage losses incurred pursuant to paragraph (h) of Discipline Rule 701: [General Chairman File: 82-38-PM. Carrier File: SG-681]"

OPINION OF BOARD: Claimant was sent a notice under date of September 23, 1982, to attend an investigative Hearing as to his "responsibility, if any, in connection with failure to properly maintain your territory, and failure to make required company and DOT inspections and reports." Following the Hearing, the Claimant was assessed a disciplinary penalty of 15 days' suspension.

The Organization argues that the Investigation was procedurally defective under Rule 701 (b), which reads as follows:

"(b) The employee involved will be notified in writing of the charge against him within ten (10) days of the Company's knowledge of the alleged offense."

It is the Organization's contention that the Carrier had "knowledge of the alleged offense" since May 14, 1982, when its Supervisor, Signals and Communications, sent the following letter to the Claimant:

"A Signal Maintainer is required to test and inspect signal equipment on his territory and send reports to S&C Supervisor. These tests and inspections are to be made according to the C&O Railway Standard Specifications Manual and the Chessie System Signal and Communication Standard Drawings Manual.

You have been sending blank and duplicated reports which are unacceptable and these reports have been returned to you. You have been asked to make proper test, inspections and reporting but you have failed to do so. According to my records you are behind on all testing, inspecting and reporting required by a maintainer. Since you have been sending improper reports, I assume these tests and inspections aren't being made.

Listed is form number and amount of time you are behind according to my records:

N-28	4 Months
N-29	1 Month
N-30	3 Years
N-37	2 Years
N-43	4 Months
N-45	20 Months

These test and inspections are to be made immediately and the report is to be sent to my office without fail. Violation of this reporting in the future will not be tolerated."

The Organization argues that, if disciplinary action was believed to be warranted, an Investigation should have been based on the May 14, 1982 letter. Since the notice of Hearing was not sent to the Claimant until September 25, 1982, the Organization asserts that the investigation was untimely and therefore improper.

The Carrier argues that its determination to hold an investigative Hearing was not based on its findings in the May 14 letter, which was clearly shown to be a warning that further violation of reporting requirements "will not be tolerated". Rather, it is the Carrier's contention that the Investigation was based on the results of a Federal Railroad Administration Investigation on September 13-14 of the Claimant's assigned section. With this as a basis, the Investigation letter was sent within the required 10 days.

The Board finds the Carrier acted in timely fashion. In May, the Carrier warned the Claimant concerning his improper reporting, but determined that this did not warrant disciplinary action beyond a warning. The record shows clearly that the Carrier received further information about the Claimant's alleged failure to perform his assigned duties in a satisfactory manner following the FRA report, which listed "78 defects".

The record of Hearing includes protestations by the Claimant as to his efforts to meet the requirement of his position. Without reviewing the FRA investigative reports in detail, the Board finds that the Carrier had fully sufficient grounds to determine that he had failed "to properly maintain" his territory and to make the proper inspections and reports in connection therewith. The resulting penalty is not unduly harsh.

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 Employee involved in this dispute are respectively Carrier and Employee 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

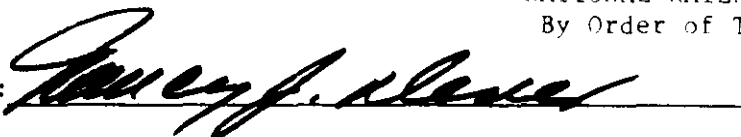
That the Agreement was not violated.

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 14th day of March 1986.