

The Third Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The thirty (30) days of suspension imposed upon Track Foreman P. A. Dilley and Trackman L. W. Righter for alleged violation of Rules 1, 104, 200, General Rules E, L, N and Basic Rule 1 of the Uniform Code of Safety Rules was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File S 214-160).

(2) The claimants' records shall be cleared of all charges leveled against them and they shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Approximately three (3) hours after Claimant Righter contends he secured a switch lock, a Supervisor and a Manager of the Carrier found the switch stand unsecured, and the switch lock and its chain laying on the switch tie. The Supervisor testified that the lock appeared undamaged and not tampered with. Additionally, the Carrier's records indicate that there was no reason for any other employee of the Carrier to use the switch between the time that the Claimant testified he secured the switch and the time that the switch was found unlocked. The co-Claimant in the case, Foreman Dilley, testified that he could not say for certain whether or not the switch lock was secured; Foreman Dilley did not see Righter lock the switch nor did he insure the switch was locked prior to leaving the area with Righter.

There is substantial evidence from which to conclude that Claimant Righter did not properly secure the switch and that Claimant Dilley was negligent in his duty. Although the evidence is circumstantial, it is substantial and sufficiently convincing nonetheless.

Given the serious nature of the offense and the record of this case, the Board finds no basis upon which it should overturn or mitigate the discipline imposed by the Carrier.

The Board finds no procedural violation on the part of the Carrier in implementing the discipline.

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 25th day of February 1988.