

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District):

(a) Carrier violated the parties' Schedule Signal Agreement, particularly Discipline Rule 55, when it failed to allow Max B. Baker the required fair and impartial hearing following Carrier charging him with '...failure to promptly repair and return to service the Equipment Defect Detector at MP 9.5, Minford, Ohio, at approximately 14.45 p.m. on December 14, 1984.'

(b) As a consequence of such action, Carrier be ordered to make Claimant Baker whole for all wages and benefits lost, including all seniority rights unimpaired, all vacation rights, pay premiums for C&O hospital association dues and Travelers Insurance, if any, and pension benefits including unemployment insurance. Furthermore, Claimant Baker's personal record be cleared of all reference to the matter involved herein."

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 employees 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.

On December 18, 1984 the Carrier directed the following notice to the Claimant:

"Arrange to attend investigation to be held in the Safety Trailer, Division Headquarters, 2600 Parsons Avenue, Columbus, Ohio at 9:00 a.m. Thursday, December 27, 1984.

You are charged with responsibility, if any, for failure to promptly repair and return to service the Equipment Defect Detector at MP 9.5, Minford, Ohio, at approximately 14:45 p.m. on December 14, 1984.

Arrange for representation and/or witnesses, if desired."

Subsequent to the investigation, the Carrier directed the following notice of discipline to the Claimant:

"Referring to investigation held December 27, 1984, at Columbus, Ohio, it has been found that you were at fault for failure to promptly repair and return to service the Equipment Defect Detector at M.P. 9.5, Minfore, Ohio, at approximately 14:45 p.m. on December 14, 1984, and the discipline assessed is ten (10) working days actual suspension; and, you will be restricted from working as an independent maintainer or working without direct supervision.

Suspension will begin Wednesday, January 16, 1985, and run through Tuesday, January 29, 1985, inclusive."

The discipline is challenged on procedural and substantive grounds. It is alleged that a fair hearing wasn't held since neither the letter of charges nor the transcript record referred to any Carrier rules and/or instructions that Claimant violated or with which he failed to comply. Substantively, it is argued that the Carrier failed to sustain its burden of proof and that, even if some discipline was warranted, the penalty assessed the Claimant was excessive, arbitrary and capricious.

The Board has reviewed the record and has arrived at the following conclusions: First, the Claimant did receive a fair hearing. It is not necessary under the relevant contract provision that specific rules be cited. What is necessary is that the Claimant be able to understand the charge to an extent that he is able to prepare a defense. In this case, the letter of charge is quite clear as to what conduct is in question.

On the question of guilt, it is clear at a minimum that the Claimant didn't promptly repair the equipment defect detector. Given the importance of the equipment, this is enough to warrant a ten-day suspension.

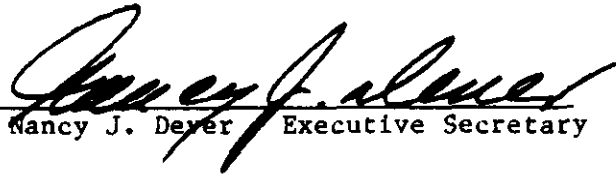
However, we do believe that permanently restricting him from "working as an independent maintainer or working without direct supervision" is excessive given these circumstances. Therefore, the Carrier shall remove such a restriction from the Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.