

The Third Division consisted of the regular members and in addition Referee Mary H. Kearney when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & Northwestern Transportation Company (C&NWT):

On behalf of Signal Maintainer H. Merkin, who was suspended from Carrier's service account of:

(a) Carrier violated the current Signalmen's Agreement dated May 1, 1986, as amended, in particular Rule 15 which states 'the notice must specify the precise charge(s) for which the investigation is being held.'

(b) Carrier now be required to compensate Mr. H. Merkin for all time lost which consists of eight hours s.t. for January 24, 27, and January 28, 1986 plus eight hours at the o.t. rate as he was told to work Sat., January 25, 1986, at Deval Terr. plus clear his record of this charge. General Chairman file: G-AV-76 Carrier file: 79-86-6"

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.

At about 9:00 PM on December 28, 1985, Claimant, a Signal Maintainer was informed that the crossing gate at Nagle Avenue in Chicago was down. At 10:00 PM Claimant observed that the gate was malfunctioning and that the crossing lights were all but extinguished. After ascertaining that the charger was bad Claimant went to Deval Tower to pick up a new battery charger and while there advised the Tower operator that the crossing gate was out of order. Back at the Nagle Avenue crossing Claimant chained the gate in the up position and then installed the battery charger in the relay case. With the gate chained up the crossing was left protected only by the bell and flashers.

At about 12:40 AM while working in the relay case the bell and cross lights began to operate indicating a train was approaching. Claimant proceeded to the crossing waving a flashlight and flagged two approaching automobiles. The automobiles stopped but the train struck the front bumper of one of the cars. Had the gate been down the car could not have encroached as close as it did to the track.

Subsequently, Claimant was sent a notice to attend a formal investigation which stated in part:

"CHARGE: Your responsibility in connection with the grade crossing accident at Nagle Avenue which occurred on Saturday, December 28, 1985."

Following the investigation the Carrier advised Claimant that he was to be assessed discipline of five days actual suspension from service.

The Organization contends that the Carrier's notice of investigation was defective in that it failed to allege a specific rule violation as the basis for the charge against Claimant. Such omission would be problematic if the language of the charge was otherwise so imprecise as to hinder Claimant's and the Organization's ability to prepare a defense. Third Division Awards 25118, 25039. That is not the case here and, therefore, the Organization's assertion cannot stand.

Concerning the substantive dispute, the record supports, in part, the Carrier's determination of Claimant's guilt. The Carrier's procedures provide that:

- 1) Maintenance test and repair work (of automatic highway grade crossing warning systems) which may interfere with safe operation of trains, must not be started until train movements have been fully protected.
- 2) Proper precautions must be taken to protect highway traffic before changes or tests are made which would effect normal operation of highway grade crossing warning systems. Maintenance Procedure No. 3. 4/2/85."

Although Claimant did inform the tower operator that the gate was malfunctioning, this information essentially affirmed what the Carrier already knew, i.e., that the gate was down. Claimant failed, however, to advise either the tower operator or the Train Dispatcher when he chained the gate open, and, thereby, reduced the protection normally available at the crossing. This failure eliminated any opportunity the train crew may have had to take extraordinary measures to assure that no vehicle could foul the track.

In defense of Claimant the Organization argues that highway crossing gate lock-out procedures, issued by the Carrier in November, 1985, are unclear and that they are what prompted him to chain the gate upward. (An action he had never before taken.) Accordingly, the Organization contends that Claimant should not be held responsible in this matter.

The Board agrees that in order to understand the November 1985 lock-out procedures as the Carrier intended them, a somewhat technical reading is required. Carrier personnel provided such an explanation at the investigation, but failed to so inform Claimant when the procedures were first issued to him. In light of this, the Board finds that it was not unreasonable for Claimant to conclude that the procedures required him to chain the gate open.

Nevertheless, the procedures previously referenced represent well-established Carrier policy and they are distinct from those issued by the Carrier in November, 1985. Claimant as an experienced Signal Maintainer should have abided by them. The Board concludes that his failure to do so leaves him at least partially responsible for the accident in question. Therefore, the Carrier's disciplinary action is warranted.

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 29th day of March 1989.