

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(CSX Transportation, Inc.
(The Baltimore and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company (B&O):

On behalf of H. L. Miles, for payment of 20 days pay at his pro-rata rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Discipline Rule, when it failed to meet its 'Burden of Proof.' Carrier file 15-50 (88-46)."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Claimant was assessed a twenty (20) day suspension for failure to properly maintain a switch to FRA and Carrier standards, thereby causing a derailment. Following the derailment, three Carrier officials conducted an on-site inspection to determine the cause. They concluded that the switch point on a crossover switch was gapping, which caused the lead wheel of a tri-axle engine to go down the main track while the trailing two wheels went into the turnout. The gapping switch point was attributed to improper maintenance.

While the Organization introduced the possibility of other causes for the derailment, it is not the function of this Board to second guess the Carrier when there is substantial evidence to support its conclusion. Such evidence exists in this case. For instance, the inspection revealed that the

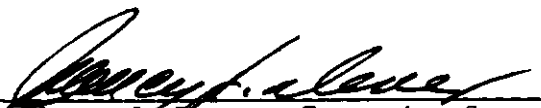
contacts in the circuit controller would not open until the switch was opened at least one-half inch, although FRA standards require the contacts to open when the point is open one-quarter inch or more. There is no basis to conclude that the Carrier was arbitrary in accepting the conclusions of the inspection team.

Having found that the charge against Claimant was proven, we turn to the quantum of discipline assessed. The failure to maintain switches and signals is a serious offense which could have dire consequences. The record shows several instances where the Carrier has assessed thirty (30) day suspensions for similar violations. In assessing discipline in this case, the Carrier noted that consideration was given to Claimant's 44 years of service without discipline. We conclude, therefore, that Claimant's exemplary prior record has already resulted in mitigation of the discipline and we are constrained from reducing it further.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.