Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 28823
THIRD DIVISION Docket No. SG-29282
91-3-90-3-200

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(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 (CNWT):

Claim on behalf of J. C. Ott for five days pay at his pro-rata rate of pay, account of the Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 51, when it did not hold an investigation within the time limits of that rule after it had removed him from service on January 27, 1989, following an incident at Rohling Road." G.C. File C&NW-G-AV-155. Carrier file 79-89-7. BRS File Case No. 7923-CNWT.

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.

The Claimant was employed as a signalman. On January 27, 1989, the Claimant was one of three signal maintenance men assigned to repair the grade crossing at Rohling Road, Palatine, Illinois. Repairs were made to the crossing protection, and three maintainers left. Subsequently, the crossing protection failed to operate when a train proceeded through the Rohling crossing. The record reveals the two other maintainers acknowledged they failed to perform any test and accepted five (5) day suspensions. Evidently, a tripped relay caused the malfunction. On January 27, 1989, the Claimant was given notice to attend a formal investigation on February 2 to "...determine your responsibility in compromising the safety of the crossing protection at Rohling Road on January 27, 1989." After that hearing was held, the Claimant was issued a five (5) day suspension.

The Organization argues Rule 51 requires the Carrier to hold an investigation within three (3) days if an employee is held out of service. The Organization points out the Claimant was removed from service on January 27, 1989, and stresses the February 2 investigation occurred six (6) days after the Claimant's removal from service. The pertinent language of Rule 51 relied upon by the Organization is as follows:

> "The investigation will be held within ten (10) days from date of alleged offense or after information of the alleged offense has reached the supervisor, except that where an employee is held out of service pending investigation same will be held within three working days from date taken out of service."

The Board has reviewed the record and finds the Claimant was not held out of service for allegedly compromising the safety of the crossing protection at Rohling Road. Rather,, the record establishes the Claimant was "pulled out of service" for insubordination in that he refused to submit to drug testing. With respect to the charge itself, the evidence of record undisputedly shows that repairs were made to the crossing protection equipment, but no tests were made by any of the maintainers, including the Claimant, which would have revealed that the relay had been tripped. This Board concludes the Organization's procedural argument is without merit and finds the evidence of record supports the Carrier's conclusion. In so finding, we will deny the claim.

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 June 1991.