

Award No. 775
Docket No. SG-773

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "That G. A. Smith be reinstated with compensation for time lost because of improper discipline administered by the officials of the Missouri Pacific Railroad in connection with the charge of neglect of duty, lack of interest in his work and failure to appreciate what the requirements of a signalman are."

EMPLOYEES' STATEMENT OF FACTS: "For many years prior to March 21, 1938, G. A. Smith was an employe in the Signal Department of the Missouri Pacific Railroad Company regularly assigned to maintenance duties on an extended and scattered territory with Omaha, Nebraska, designated as his home station or headquarters. On March 21, 1938, he was taken out of service, advised that he was charged with neglect of duty, lack of interest in his work and the failure to appreciate what the requirements of a signalman are. He was given an investigation and hearing on these charges on April 7 and on April 11 he was dismissed from the service of the carrier.

"A transcript was made of the evidence presented at the hearing and copy furnished Mr. Smith.

"The employes hold that the charges as above stated were not sustained by the management during the investigation and have appealed from the decision in regular order of succession up to and including the highest officer designated by the management to handle such appeals, as is provided for in the discipline rules contained in the current agreement; however, the management failed to comply with the provisions of these same rules in granting conference or rendering decisions in connection with this case."

POSITION OF EMPLOYEES: "The employes take the position that the discipline administered to Mr. Smith, as here contested, was wholly unjustified and not administered as provided for in the rules of the existing agreement between the Missouri Pacific Railroad Co. and its employes represented by the Brotherhood of Railroad Signalmen of America, nor is such action sustained by the evidence submitted at the investigation as contained in the transcript taken at the hearing and here furnished your Honorable Board as Employes' Exhibit No. 1.

"Rules 54, 55, 56, 60 and 61 of the current agreement read as follows:

'Rule 54. An employe, who has been in service more than thirty (30) days shall not be disciplined or dismissed without investigation, at which investigation he may be represented by counsel of his own choosing. He may, however, be held out of service pending such investigation. The investigation shall be held within ten (10) days of the

from service, 8:00 A. M., Monday, March 21, 1938, following which he was afforded formal investigation as provided for in our wage agreement rules with the Signalmen's Organization on April 7, 1938. On April 11, 1938, he was formally advised of his dismissal from service account neglect of duty.

"We feel it is unnecessary to comment on the responsibilities attached to the safe operation of signal systems, the importance of maintainers observing rules and instructions issued by the management for their guidance to maintain signal apparatus in a manner to insure its functioning at all times particularly from a safety standpoint.

"The territory assigned to Mr. Smith, as well as the units of signal apparatus in this territory is less than the average prevailing on other maintainers' territories, both as to units and as to mileage (see Carrier's Exhibit No. 2), hence no reasonable excuse could be advanced by Mr. Smith for the unsatisfactory maintenance work found to exist on his territory other than that he was careless and neglectful, a trait that cannot be upheld by the management of employes occupying so important a position as a signal maintainer.

"Insofar as our wage agreement rules with the Signalmen are concerned, we feel that all its obligations thereunder have been fully met, in that formal investigation at which Mr. Smith was represented by counsel of his choosing, was afforded prior to the assessing of discipline. As to the measure of discipline applied, we feel it is a prerogative of the management, and in assessing discipline it might be stated that the measure thereof is fixed with due regard to the individual's past record, the seriousness of the offense at hand and many other factors are taken into consideration, but in the final analysis discipline is an attribute of management and it falls upon the management to accept full responsibility for the employment of its employes and discretion in deciding the competency and ability of its employes. Where the management acts in good faith and without ulterior motives and does not abuse the right and privileges of employes under the contracts and rules of wage agreements between the employer and employee, we seriously question that the National Railroad Adjustment Board has any right to interfere in the measure of discipline applied by the management to its employes.

"There is no question of Mr. Smith's guilt of unsatisfactory service in the performance of his duties as a signal maintainer; that this condition has prevailed for a number of years; that he has been repeatedly cautioned and told by supervisory forces to mend his ways; suspended from service as an act of discipline; subsequently reinstated upon his promise to properly maintain the signal apparatus on his territory, all of which have been without avail as is evidenced by the conditions found on his territory that finally resulted in his being removed from the service."

There is in existence an agreement between the parties bearing effective date of March 1, 1929.

OPINION OF BOARD: The record discloses that the appellate officers, while appeal was pending, were furnished by their subordinates with highly prejudicial statements against petitioner which charges and statements formed no part of the investigation and which petitioner and his representative never had any opportunity to hear or refute. Such procedure is grossly improper and constitutes a denial of a fair and impartial hearing such as the rules contemplate should be given.

In such circumstances the Board has no alternative but to order reinstatement.

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

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier failed to accord petitioner the fair and impartial hearing to which he was entitled.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1938.