

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
ERIE RAILROAD COMPANY**

DISPUTE.—"Request that Signalman J. C. Emerick be reinstated and paid for all time lost."

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This case being deadlocked, Paul Samuel was called in to sit with this Division as Referee.

At approximately 8:20 A. M., September 9th, 1933, Engine 3302 and five cars were derailed at BK Tower, West End of Meadville Yard. The derailment was caused by a Hayes derail which was permitted to remain in a derailing position after the pipe-line connection thereto had been disconnected by Leading Signalman W. E. Marsh and Signalman J. C. Emerick. The Leverman at BK Tower was not advised by Leading Signalman Marsh of the intended disconnection of the pipe-line referred to, thus permitting the Leverman to operate the interlocking levers in the tower governing the movement of trains over this plant.

The two employees involved, Marsh and Emerick, signed separate statements within a few hours after the accident, which is in accordance with the customary requirement of the carrier in matters of this kind. The making of these statements was at that time handled by the management representative. In part, Marsh states as follows:

"This is the first time to my knowledge that I have neglected to fully notify an operator that I was going to disconnect any part of his plant. I thoroughly realize my responsibility in connection with the derailment of Engine 3302 at Buchanan Tower, as I failed to notify the operator of any work I was to do on this plant in this particular instance."

In part, Emerick states as follows:

"Foreman Marsh was at the place where the pipe was to be disconnected and we immediately commenced work disconnecting same. I did not ask Mr. Marsh at the time whether or not it was O. K. to do this work, as I assumed, when he was up in the tower telephoning, that he had made the necessary arrangements notifying the towerman of the nature of the work in hand."

Thirty-two days later and after his dismissal, Emerick stated, in part, as follows:

"* * * The reason I did not ask Foreman Marsh if he had made the arrangements with the towerman was that he was up in the tower and he started doing the work himself, and it is not the practice of the men to ask a Foreman if he did this or that when he is doing the work himself."

The primary cause of this accident was the failure on the part of Signalman Marsh or Signalman Emerick to place the derail in a nonderrailing position, i. e., to remove the derail following the disconnection of the pipe line that governed its operation from the tower.

It is contended by the employee's representatives that the first statement made by Emerick immediately after the accident was procured through undue cir-

cumstances when he was not given a reasonable opportunity to be represented in making this statement; that Leading Signalman Marsh, who was in charge, was entirely responsible for the accident for the reason that it was not the duty of Emerick to inquire of Marsh whether he, Marsh, had made the necessary arrangements notifying the towerman of the nature of the work in hand; that the carrier management should have assumed the major share of the responsibility of the accident because the interlocking plant was improperly constructed in its original state.

It is contended by the carrier that had Signalman Emerick complied with the rules of the Company, particularly Rules 617-624 and 683, which apply to the method of doing work around interlocking plants, that the accident would have been avoided; that the derail should have been taken off the rail after Emerick had removed the cross lead of pipe, and that Emerick should have done this because he was on the spot at the time and disconnected the pipe from the derail, and that it was as much the duty of Emerick to be on the lookout for approaching trains and to inform himself as to the conditions as it was the duty of Marsh; that the property damage sustained to the carrier amounted to \$7,200.00, with additional expenses for detouring other trains while the track was obstructed, plus settlements made for personal injuries sustained by three train service employees; that the signal equipment originally installed at that point was not of faulty construction and that the equipment in use was the usual and ordinary equipment, although some Railroads are using, in some instances, additional safety devices, especially when renewing a condemned interlocking plant of more or less obsolete original construction, and that had Emerick observed the rules and regulations, the accident would not have occurred even with the older equipment. The employee's representatives have failed to answer this last contention relating to equipment, and we, therefore, assume that this statement is true and correct.

Signalmen on all Railroads must be familiar with the rules and regulations adopted by the carrier with reference to safety measures. It is common practice for Signalmen to be examined from time to time for the purpose of keeping them familiar with the rules and alert as to their responsibilities. Signalman Emerick admits that he did not ask Leading Signalman Marsh as to whether he, Marsh, had informed the Towerman as to the nature of the repair work which was being done at the place of the accident. He admits that he "assumed" that Marsh had complied with the rule and informed the Towerman. He could have asked a simple and civil question of his superior, and the accident, in all probability, would have been avoided. The fact that Leading Signalman Marsh assumed all the responsibility for the accident does not of itself exculpate any other employee who might have been negligent.

Railroad management must accept full responsibility for the employment of its employees, and it follows that it should be allowed a reasonable amount of discretion in deciding the competency and ability of its employees. (So long as the carrier management acts in good faith and without ulterior motives, and does not abuse the right and privileges of the employees under the contracts and rules and regulations existing between the employer and employee, this Board is without the right to interfere in the action of the employer in disciplining its employees.)

In this particular dispute, we are of the opinion that Signalman Emerick was not entirely free from blame, and that the carrier was within its rights when it discharged Mr. Emerick.

AWARD

The request is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 13th day of August 1935.