

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: "That F. G. Jeffery be reimbursed for time lost, February 17 to March 2, 1938, inclusive, a total of fourteen days, because of improper application of discipline in connection with signal failure."

EMPLOYEES' STATEMENT OF FACTS: "F. G. Jeffery is a regular assigned signal maintainer on the Missouri-Kansas-Texas Railroad with headquarters located at Burleson, Texas. In addition to other signal apparatus assigned to the care of Mr. Jeffery, there is a mechanical interlocking plant located at Alvarado, Texas, a distance of approximately 13 miles south of his headquarters. On the evening of February 16, 1938, Mr. Jeffery was taken out of service because of an alleged exhausted battery which operated signal 17 and lock No. 11 in the interlocking plant at Alvarado.

"Under date of February 14, 1938, Mr. Jeffery was advised by letter, over the signature of J. A. Johnson, Superintendent of Telegraph and Signals, as follows:

'Denison, Texas, Feb. 14, 1938.
File PR—

Mr. F. G. Jeffery:

A report from Mr. Dutton indicates that the trouble we have recently had with electric lock failures at Alvarado interlocking plant was due to exhausted battery, which made it necessary that the operator break the seals and operate the lock by hand, which is a dangerous practice.

A condition of this kind would not occur, except by neglect of duty on your part.

Effective Wednesday evening, February 16, you will be relieved from duty. On that evening please turn your keys over to the Agent at Burleson.

(Signed) J. A. Johnson

Cc—Mr. J. J. Gallagher'

"An investigation as to these charges was held under date of February 25, 1938, by Mr. Johnson. Under date of March 3, 1938, Mr. Jeffery received the following from Mr. Johnson as his decision in the case following the investigation:

amended, or modified they shall be obligatory upon the carrier after a copy thereof shall have been served as above provided.'

"Such action if imposed upon the carrier and not approved by the Commission would usurp certain power and authority delegated to the I. C. C. under this Act and subject the carrier to unnecessary and inescapable penalties as provided in Section 26 (h):

'(h) Any carrier which violates any provision of this section, or which fails to comply with any of the orders, rules, regulations, standards, or instructions made, prescribed, or approved hereunder shall be liable to a penalty of \$100 for each such violation and \$100 for each and every day such violation, refusal, or neglect continues, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violations shall have been committed. It shall be the duty of such attorneys to bring such suits upon duly verified information being lodged with them showing such violations having occurred; and it shall be the duty of the Commission to lodge with the proper United States attorneys information of any violations of this section coming to its knowledge.'

"The Carrier submits for the foregoing reasons these failures were caused by exhausted battery for which Signal Maintainer F. G. Jeffrey is responsible and respectfully requests the claim of the employees be denied."

There is in existence an agreement between the parties bearing effective date of February 16, 1922.

OPINION OF BOARD: The employe involved in this dispute was assessed fourteen days actual suspension from service due to two electric lock failures at the Alvarado, Texas interlocking plant. Carrier attributed the failures to an exhausted battery. The responsibility of avoiding such a condition rested upon the employe involved.

Petitioner contends that since the record conclusively shows the interlocking plant functioned continuously without interruption for almost three weeks after the last failure that the charge of "exhausted battery" has not been sustained.

Carrier relies upon its right to discipline employes for infraction of any of its rules involving the safety of its operation.

The record shows that on January 24 and 30, 1938, the third trick leverman at Alvarado, Texas, reported that he had been forced to break seal on Lock No. 11 and operate same by hand due to failure of electric lock to work. Signal Maintainer F. G. Jeffrey, on whose territory this facility is located, was called to make an inspection and repairs and in each instance reported lock working satisfactorily upon his arrival and that he could find no cause for failure.

On February 11, 1938, Signal Inspector W. H. Dutton made an inspection and test of the signal facilities at this point and reported that the failures of January 24 and 30 were due to exhausted condition of battery and upon this report, Jeffrey was suspended and after trial assessed the fourteen days actual suspension penalty.

This Board has on numerous occasions expressed its unwillingness to interfere with the action of carrier in discipline cases except where the evidence clearly indicates that carrier acted arbitrarily without just cause or in bad faith. See Award Nos. 135, 232, 373, 419, 431 and 436.

There is considerable conflict in the record as to whether the battery had in fact reached such a state of exhaustion as to require immediate removal, and the record does not show the instructions carrier has issued to its signal employes for their guidance in making battery renewals. While this conflict

and deficiency, if they stood alone, would be insufficient to authorize this Board to override the action of carrier in the instant case, the record also shows that another matter, in no way connected with the charge, preferred against Jeffrey, may have motivated carrier in taking the disciplinary action it did take.

The record shows that when Dutton inspected the interlocking facilities on February 11 he did so with Jeffrey and at the conclusion thereof instructed Jeffrey to replace the battery at the first opportunity. Jeffrey had not done so on February 17 when he was suspended, although the official who made the suspension had no knowledge of this fact at the time. Later when the case was appealed to the Vice President and General Manager of carrier he informed the General Chairman of the Brotherhood both verbally and later in writing that had Jeffrey carried out in a day or two the instructions of Dutton he "would not have gotten in the trouble he did." Jeffrey was not charged with failure to obey the instructions of Dutton, and since this matter was admittedly considered by the Vice President and General Manager when the case was before him on appeal (See Award No. 775), the presumption in favor of the legality of carrier's action disappears and carrier must be held to more specific proof of the charge preferred against Jeffrey than otherwise would be required. Carriers instructions for the replacement of batteries and the particulars in which these instructions were not followed by Jeffrey should be shown. If the battery had reached a point where it should have been replaced and controlling instructions were violated, carrier should encounter no difficulty in showing these facts.

The case will be remanded for the development of these facts and if the parties are unable to adjust the dispute within 90 days it may be returned to this Board with these additional facts.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

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

That the case should be remanded to the parties for further handling on the property.

AWARD

Case remanded in accordance with the above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of September, 1939.