

Award No. 4294
Docket No. SG-4133

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Request that Mr. C. L. Bacigalupo be restored to the service of this Carrier in his position of Signal Foreman and that he be compensated for all time lost since November 25, 1946. Further, that all seniority, service, vacation and other rights be restored to the claimant because of being unjustly removed from the service of this Carrier.

(b) That the Carrier official who instructed the claimant to go home before proper tests were completed on signal P 191 and other apparatus involved in the failure be held responsible for the improper aspect displayed by signal P 191.

OPINION OF BOARD: Claimant C. L. Bacigalupo was first employed by Carrier in April, 1926, as Signal Maintainer; was appointed Signal Foreman in August, 1944, which position he held at the time covered in the claim.

At the time of the incident in question he had been in the employ of the Carrier for 20 years. On November 25, 1946, he was dismissed after investigation and hearing.

The events leading up to Claimant's dismissal are, in brief, (although there is some conflict with reference thereto), as follows: Upon reporting for duty at 7:30 A. M., November 14, 1946, Claimant was assigned to start at Jackson Avenue and work east on changeover of signal system from double track operation to single track operation on account of abandonment of No. 1 track on branch line between Raritan Junction and South Plainfield, effective 11:01 A. M., November 14, 1946. The portion of the project to which Claimant was assigned consisted of approximately three miles. As all signal work was not completed and check-tested by the time the order covering track changes went into effect, Claimant and other Signalmen, who had not completed their assignments, remained on duty to complete the same. Claimant was on duty for 36 hours.

While, as stated, there are conflicts in the record with reference to instructions given, and reports made by Claimant as to progress made, apparently the signal was not functioning properly when Claimant went off duty at 7:30 P. M. on November 15, 1946.

It is contended on behalf of Claimant that he did not receive a fair and impartial trial as contemplated by Section 1, Article 7, of the Agreement; also, that he was not entirely to blame in the matter of the signal not functioning properly at the time he went off duty, as Carrier's representatives were likewise at fault by reason of the manner in which the entire situation

was handled. It is alleged that the Carrier was more concerned with getting Claimant off overtime than with the proper functioning of the signal.

The Carrier contends that the Supervisor assumed from reports of progress made by Claimant that complete tests had been made and that the signal was functioning properly when Claimant went off duty. Later it was found that this was not the true situation.

There are discrepancies in time given by various witnesses with reference to changes and reports made. Claimant testified:

"Q. What report did you make to Mr. Peney in the early morning of Nov. 15th regarding signal P-191?

A. I told him at that time we had an approach circuit coming back, that the signal went to approach but we could not get any test account of the circuits not coming back properly."

There is evidence relating to Signal P-191 being left unprotected for a period of some three hours during the night of November 14th and 15th. However, Claimant testified that he was advised that no train was coming, and that:

"A. It was not unprotected. When I found the signal did not function properly I had the control wires disconnected."

And again:

"Q. In other words the signal was working on the night of the 15th.

A. It was working at an approach and it was left unprotected and tests were not made until the morning of the 15th.

Q. Proper test was not made until the 16th at 2:55 P. M. on signal P-191, what was your reason for leaving that signal untested?

A. I was told by my superior to go home, and make a check the following day.

Q. Was he aware of the fact that test had not been made on the signal?

A. I told him I did not get any train test.

Q. Did he know signal had not been checked?

A. I told Mr. Peney that train test had not been made.

Q. Did you ask him if you could go home without test being made?

A. I did not ask him. He told me to go home."

Examination of Claimant by Mr. Peney:

"Q. When I talked to you on the morning of the 15th it was around 1:30 as near as I could tell, you told me signal was working at approach and you had a few more circuits to check?

A. Yes.

Q. I asked you if you wanted me to come down, you said 'no', you said you would make out all right, is that correct?

A. Yes.

Q. On the information I obtained from you when you said * * * I took it from those words that you were doing all right and that the signal could be placed in service so at 1:30 A. M. on the morning of the 15th I called the dispatcher and told him that the signals were working on the P. A. Branch now and I went home. Before I went home I tried to get you, you did not call me any time that night?

A. No.

Q. When we started to work on the Amboy Branch I told you and Davis that the cases had to be checked, is that right?

A. Yes.

Q. It was my understanding that they were checked?

A. They were not checked by me.

Q. You said some were checked but you did not say which ones.

A. I did not have time to check a case had to keep working, there was such little time to do it in."

The above evidence gives the general situation existing relative to the operation of the signal. The transcript covers nine pages in the record.

It would seem on this record that Claimant did not do all that could reasonably be expected of him, which resulted in creating a dangerous situation which might have easily been the cause of serious results. And by the use of the same yardstick in the exercise of ordinary prudence and caution, it cannot be said that he was entirely to blame.

Therefore, the Opinion will be that on Item (a) of the claim, Claimant will be restored to the position he held at the time of his dismissal, with seniority, service and vacation rights restored, but without compensation.

On Item (b) it will be the Opinion that the request be denied as asking for an improper encroachment on the prerogatives of Management.

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 Employee involved in this dispute are respectively carrier and employee 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 Item (a) is sustained with modifications as stated in the Opinion. Claimant is to report to proper Carrier officials prior to February 15, 1949, if he desires reinstatement. Item (b) denied.

AWARD

Item (a) sustained with modifications as stated in the Opinion and Findings. Item (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1949.