

Award No. 14120
Docket No. TE-13684

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad on the matter of the:

"Appeal from 12 day suspension in behalf of P. L. Lafferty, Block Operator, Tyndall Block Station, on the following charge:

Improper Manipulation of Interlocking Facilities at Tyndall, 6-24-60."

OPINION OF BOARD: The Claimant is a Block Operator at Tyndall Block Station, Pan Handle District of the Buckeye Region. By written notice dated July 6, 1960, the Claimant was notified to attend an investigation on July 12, 1960 in connection with the following occurrence:

"Improper manipulation of Interlocking facilities at 10:20 A.M. at Tyndall, 6-24-60."

The investigation was held at the appointed time and place and the Claimant was present.

Following the investigation the Claimant was notified to attend trial on August 3, 1960, in connection with the following charge:

"Improper manipulation of Interlocking facilities at . . . Tyndall, 6-24-60."

The trial was postponed by agreement and was held on August 18, 1960. The Claimant was present and was represented.

On October 20, 1960, Claimant was notified that he was disciplined by suspension of 12 days.

On October 21, 1960, the Claimant appealed his discipline to the Superintendent-Personnel. The appeal hearing was held on November 11, 1960, and on November 29, 1960, Claimant was informed that his appeal was denied.

The Employees contend that the Trial Record does not establish that the Claimant is guilty of the charge. They contend that the record establishes only that No. 1 switch at Tyndall was defective in some manner on the morning of the date in question and again after the Yard Engine passed over it when signal department contends that the switch was run through. They further contend that this in no way connects Claimant with the charge and that the Trial Record does not determine when this switch was run through or which train ran through this switch.

It is the Employees' position that the discipline imposed was not warranted, and that the record of the Claimant should be cleared of the charge.

It is the Carrier's position that the switch did not and could not return to normal without manipulation by the Claimant. Carrier cites tests made following the occurrence and parts of the Trial Record and investigation in support of their position. (R-68, 69, 70 and 71.)

This Board has held in numerous awards that when the Carrier charges an employee with a rule violation or an act of negligence, the burden of proof is upon the Carrier to prove the charge. See Awards 11556, 11573, 11996, 12252, 12435, 12538, 12856, 13115.

After a careful review of the Trial Record we feel that the Carrier has not met this burden. Not only has the Carrier failed to establish a violation by a preponderance of the evidence, but they have failed to support their position that the switch could not return to normal without manipulation by the Claimant. For these reasons the Board will sustain the claim.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

**CARRIER MEMBERS' DISSENT TO AWARD 14120,
DOCKET TE-13684 (Referee Harr)**

The Majority erred in this decision. They found that Carrier:

"* * * failed to suport their position that the switch could not return to normal without manipulation by the Claimant. * * *"

In the face of the evidence submitted, this assertion is grossly inaccurate. The parties prepared a Joint Submission on the property, and therein the Carrier made the following assertion which was never challenged or disproven by the Organization: (R., p. 70)

"In addition the Carrier desires to point out that the switch lever on the Interlocking machinery in the tower is mechanically locked by the signal control lever for the signal that was displayed to the crew for the movement through the interlocker. The only way that the switch could be returned to normal position would be for the signal lever on the machine to be returned to normal position by manipulation by the operator. * * *"

Thus, it is an incontrovertible physical fact that the switch lever could not be returned to normal unless the signal lever was also returned to normal. The only authorized person in the tower who could have thrown either of these levers was the Claimant. The Carrier's case consisted of evidence stronger than "eye-witness testimony", and should not have been ignored.

For the reasons set forth above, among many others, we dissent.

W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts