

Award No. 15751
Docket No. SG-15734

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 700(b), when it assessed discipline and suspension to Signal Foreman C. T. Manchester and Signal Maintainer J. A. Sandidge following an investigation held at Gurdon, Arkansas, on June 12, 1964, to develop facts and place responsibility in connection with neglect to repair insulated joint at north end of Arkadelphia, Arkansas, which failed on May 20, 1964, causing red blocks to delay Trains No. 7 and No. 8 on that date.

(b) The Carrier at the investigation did not prove that Signal Maintainer J. A. Sandidge violated Rules 610 and 260 of the MofW Rules and Regulations.

(c) The Carrier be required to remove the thirty (30) days' deferred suspension from Signal Foreman Manchester's record.

(d) The Carrier be required to remove the thirty (30) days' actual suspension from Signal Maintainer Sandidge's record and compensate him for all time lost as a result of his suspension.

[Carrier's File B-225-414]

OPINION OF BOARD: This is a discipline case. Three persons, Signal Foreman C. T. Manchester, Signalman J. A. Sandidge, and Track Foreman J. W. Kiser, were charged by the Carrier with the fault of failing to take proper preventive action in regard to the failure of insulated joints at the north end siding switch at Arkadelphia, Arkansas, which failed on May 20, 1964, causing the red block signal to delay Trains No. 7 and 8 on that date.

An investigation hearing was held at Gurdon, Arkansas, which commenced June 12, 1964. All of the three employees referred to above were present at the hearing and accompanied by representatives of their choice. Considerable testimony was taken, the right of cross-examination was not restricted, and all employees involved were told they could bring additional witnesses to testify in their behalf. It is noteworthy that at the conclusion of

the proceedings the employes and their respective representatives indicated in writing, i.e., by affixing their own signatures to the transcript, that they had the opportunity to make a full and complete statement of the facts. The complete transcript is part of the record presented to the Board.

Subsequent to the investigation, the punishment assessed Mr. Sandidge was "Thirty Days Actual Suspension," and the punishment assessed Mr. Manchester was "Thirty Days Deferred Suspension." The record is silent as to what punishment (if any) was administered in reference to Mr. Kiser, who is not involved in the instant claim.

The claim was denied on the property and appealed to this Board. The Employes contend in their appeal (as they did in the handling on the property) that the investigation was improper and that, in any event, the discipline assessed was harsh and excessive. Their main complaint in reference to the investigation was that Mr. Manchester and Mr. Sandidge were not notified prior to the hearing of the specific charges they would be required to answer.

We can not agree with the allegation that the notice given those involved was inadequate. The notice of the investigation was precise in the following particulars: each was notified in regard to individual fault, "... on account of each of you failing to take necessary action to see that repairs were made prior to failure . . .," the exact date was specified, the particular place was clearly described, the identity of the Trains involved was stated, and the nature of the signal failure was too explicit to leave any room for doubt.

The investigation hearing was fair.

Although the testimony at the hearing was in many respects conflicting, it is sufficient to sustain Carrier's finding that each of the employes in the case at hand was sufficiently negligent to justify disciplinary action.

However, the record is devoid of any explanation as to why the discipline assessed Mr. Sandidge was more severe than that assessed Mr. Manchester, who was his superior. It was alleged (and not controverted) on the property that Mr. Sandidge had been a signal maintainer for many years and that this was the first case in which he had been involved in a train delay caused by faulty joints. It is also significant that the transcript of the hearing, shows that on May 14, 1964, Mr. Sandidge did notify his signal foreman, Mr. Manchester, that the joints which failed May 20, 1964, were faulty. The evidence in this regard is also not contradicted. Therefore, we can not find that discipline in this case was administered with an "even hand." See Award No. 914 of the Fourth Division (Bailer).

Carrier may have had some good reason, which is unknown to the Board and not of record for us to examine, why the Sandidge discipline was disproportionate. But, we are not justified in speculating that such was the case.

For the reasons stated above the present grievance should be adjusted and settled as follows: The punishment of Signal Maintainer Sandidge should be modified and reduced to thirty (30) days' deferred suspension; he should be compensated for all time lost as a result of his thirty (30) days' actual suspension; and his record should be corrected to show the reduction in punishment. Except as shown above, the Claim should be denied.

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 discipline assessed Claimant Sandidge was so disproportionately excessive it is deemed to be arbitrary, and, accordingly, it is modified as indicated above, both as to his record and compensation awarded for all time lost as a result of said thirty days' actual suspension.

That, except as indicated above, the Claim is denied.

AWARD

Claim sustained in part and denied in part in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.