

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company (Lines West of Buffalo):

On behalf of Leading Signal Maintainer K. L. Darby for pay for November 25 and 26, 1969, and that his personal record be cleared of any charges connected to the discipline of two days actual suspension (November 25 and 26, 1969) for his alleged responsibility for putting a switch on #1 track, located at N.P. 245+350', in service without providing proper fouling protection.

OPINION OF BOARD: This is a discipline case in which Claimant was charged with putting a switch in service without providing proper fouling protection.

The entire record in the case has been carefully considered. The Petitioner contends that the Claimant did not actually place the switch in service and that he could not officially do so. However, it is clear from the investigation, including Claimant's own statement, that he did remove signal lock from the switch and replace it with a switch lock, which would permit the use of the switch by work trains and others, and that he did so without checking to see that proper fouling protection was afforded.

The Petitioner further contends that Claimant was only properly cooperating with Carrier's track department personnel. In the handling on the property the Carrier's Superintendent-Labor Relations and Personnel acknowledged that the locks were changed at the request of the Track Supervisor, which could be considered as mitigating circumstances. Under such facts, the Board finds that the imposition of discipline was arbitrary, and the claim will be sustained.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1971.