



Award No. 18903

Docket No. SG-19134

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, 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 W. E. Vandiver and Signal Maintainer D. L. Price that they be paid for all time lost, at pro rata and punitive rates of pay, between October 30 and November 29, 1969, and that their personal records be cleared of any charges in connection with a rear end train collision October 28, 1969 at Mile Post 116.22, near Charleston, Illinois.

OPINION OF BOARD: As a result of a rear end collision on October 28, 1969, Claimants were notified that a formal investigation-trial would be conducted on November 6, 1969, to develop facts and determine their responsibility, if any, for said collision. As a result of this hearing, Claimants were assessed 30 day suspension. The Organization alleges that Carrier failed to meet its burden of proof as to who made an improper connection in the signal circuitry which was the cause of the rear end collision; and that Carrier did not specifically charge Claimants with any rule violation or wrongdoing. Carrier contends that Claimants were properly charged and discipline was properly assessed within the confines of Rule 51. Carrier contends that the Claimants were afforded a fair and impartial hearing and that the punishment of 30 day suspension was not arbitrary or capricious.

The record in this case discloses that each of the Claimants admitted observing the panel of wiring prior to the rear end collision. The record further discloses that neither of the Claimants installed the wiring. Each of the Claimants admitted that they observed that the wires were untagged, and, therefore, in an unsatisfactory or faulty condition at the time of their observation. Each of the Claimant admitted they took no action to report or correct the faulty wiring. The record further discloses that the faulty wiring caused a false clear signal which resulted in the rear end collision causing extensive property damage and bodily injury.

It is the opinion of this Board that the wording of the notice of investigation adequately apprised Claimants of the nature of the charge in order to give them full opportunity to prepare their defense. It is not necessary that a

specific rule be set out in this notice. See Awards 11170 (Coburn), 11443 (Dolnick), and many others. These awards represent the overwhelming weight of authority on this question. It is the further opinion of this Board that Carrier had no alternative than to assess punishment in this instance, if for no other reason, the admissions of the named Claimants. The punishment assessed, 30 days suspension, appears to be extremely lenient under the facts disclosed in this case. The failure of Claimants to take positive action to correct the faulty wiring resulted in loss of life, personal injury and extensive property damage. The fact that Carrier had possibly, in the past, failed to take punitive action for similar acts of dereliction of duty, is no defense in this case. This award will 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December, 1971.

DISSENT TO AWARD 18903, DOCKET SG-19134

The majority has committed error in Award No. 18903. Aside from showing its lack of technical knowledge, it has declined to apply the parties' agreement as written and engaged in gratuitous philosophy which begs the question before it.

In order to set the stage for its later philosophical comments the majority first found that because certain wires in the involved signal circuits were not tagged, they were " * * * in an unsatisfactory or faulty condition * * *." We are constrained to observe that a technically knowledgeable person would not term an untagged wire as faulty; a knowledgeable person would recognize that tagging is only for purpose of visual identification and that no electric circuit fault is created by its absence. We must also note that the majority recognizes that the Claimants were not responsible for the installation of any faulty wiring, but it fails to recognize that the fault had existed long before