

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20237
Docket Number SG-19787

Dana E. Eischen, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railroad Signalmen
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM:

Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 70, when it dismissed Mr. W. A. Rumler from his Signal Maintainer position at Sturtevant, Wisconsin, on August 7, 1970, without following the procedures prescribed by that Rule, either before or after his dismissal.

(b) The Carrier should now reinstate Mr. Rumler to his former position of Signal Maintainer at Sturtevant, Wisconsin, with seniority and all other rights and privileges restored as of August 7, 1970; and compensate him for all time lost since August 7, 1970, including overtime worked by his successor on the Sturtevant signal maintenance territory; and clear his personal record. [Carrier's File: Case No. F-1070]

OPINION OF BOARD: This is a discipline case involving Signal Maintainer W. A. Rumler. Claimant was dismissed for alleged violation of Carrier rules when his motor car was hit and demolished by a train, while the motor car was occupying a main track. The facts out of which the instant claim arose are not in dispute. Claimant Rumler was the Signal Maintainer at Sturtevant, Wisconsin on Carrier's Chicago and Milwaukee Division, with assigned territory. On August 7, 1970 claimant, upon reporting to work at 7:00 a.m., was directed to perform work on Signal 63.6 located between Sturtevant and Franksville, Wisconsin. At Sturtevant, claimant procured a track motor car to carry himself and tools to the work site and obtained Track Car Permit No. 7 authorizing him to use Track No. 1 between Sturtevant and Tower A-68 from 7:33 a.m. until 8:10 a.m. At approximately 8:11 a.m. claimant's motor car was struck by Train No. 24 near Signal 63.6 on Track 1. Claimant was not injured but the track motor car was completely demolished in the collision.

Immediately after the collision officials of the Carrier were summoned to the scene. One of these was claimant's Signal Supervisor, Mr. J. L. Frohmader. Mr. Frohmader prepared a report including claimant's admission that he had been on the track after his permit expired. Several hours later on the same day, August 7, 1970,

Mr. Frohmader sent the following wire to claimant:

"Milwaukee, Wisconsin,
August 7, 1970

"W. A. Rumler
Signal Maintainer
Sturtevant, Wisconsin

"This is to advise that for your responsibility for violations of rules of the Operating Rules for Employees in the Maintenance of Way and Structures and the Signal and Communications Department and Safety Rules Maintenance of Way and Structures and Signal and Communications Departments which resulted in your motor car being struck by Train No. 24 this date, Friday, August 7, 1970 you are dismissed from the service of this company effective immediately. Please acknowledge by wire.

"J. L. Frohmader
"Confirmation - W. A. Rumler
9316 Carol Ann Drive
Sturtevant, Wisconsin 53177"

On August 31, 1970 the Organization herein through its General Chairman requested an investigation in accordance with the applicable Agreement. Subsequently, on September 5, 1970 Carrier notified claimant as follows:

* * *

"In accordance with request made by General Chairman L. T. Davies of the Brotherhood of Railroad Signalmen and the provisions of Rule 70(a) of the Signal Department Employees Schedule, formal investigation will be conducted in my office at Milwaukee, Wisconsin at 1:00 p.m. Thursday, September 10, 1970 for the purpose of developing the facts and placing responsibility for accident wherein motor car being operated by you was struck by Train No. 24 August 7, 1970, involving possible violation of rules of the Operating Rules for Employees in the Maintenance of Way and Structures and Signal and Communications Departments and Safety Rules Maintenance of Way and Structures and Signal and Communications Departments, by you.

Please arrange to attend the investigation. You may be represented as provided for by schedule rules."

* * *

On September 18, 1970 Carrier notified claimant that upon consideration of the evidence adduced at the investigation, the position taken by Signal Superintendent Frohmader dismissing him from service on August 7, 1970 would be sustained. Appeals from this decision as well as the original dismissal of August 7, 1970 comprise the gravamen of the instant claim.

When the claim was initiated, Mr. Rumler was out of service and had been since August 7, 1970. However, while the Organization was appealing the claim on the property the Carrier reinstated claimant on a leniency basis without pay for lost time. He returned to service on November 2, 1970 pursuant to the arrangements between claimant and the Carrier in which the Organization was not involved nor invited to participate. Accordingly, the Organization continues to press the claim that its Agreement has been violated but in its ex parte submission to the Board limits its request for relief to the period claimant actually was out of service from August 7 to November 2, 1970.

The Carrier primarily relies upon an argument of mootness to contest the Board's jurisdiction of this claim; on the grounds that the claim was settled and concluded on the property between Carrier and claimant. Without prejudice to this position, Carrier also maintains arguendo that claimant received a fair and impartial investigation, was found guilty on substantive evidence and accordingly was properly disciplined.

The Organization on the other hand, insists that the settlement between claimant and Carrier is not fatal to its right to vindicate violations of the Signalmen's Agreement. Moreover, the Organization raises procedural objections regarding lack of precision in the September 5, 1970 notice of investigation; improper restrictions on its direct and cross-examination at the September 10, 1970 investigation; and discipline without notice or hearing in the August 7, 1970 dismissal.

We have carefully considered the arguments marshalled and the awards cited by the respective parties on the question of mootness and individual settlements. We are not unaware of the divergent awards and conflicting policy considerations on this question, but upon reflection we are convinced that the sounder principle is the one upholding the Organization's right, indeed its duty, to police the Agreements it has negotiated,

irrespective of individual employe settlements. It appears self-evident that this principle is most compelling in cases such as the instant one where not just a monetary claim is at stake but alleged violations of the negotiated procedural safeguards surrounding the imposition of employe discipline. Accordingly, we hold that notwithstanding the purported settlement on the property, this claim is properly presented for consideration by the Board. See Awards 3416, 4461, 5793, 5834, 5924, 6324, 6958.

Analysis of all relevant evidence in the record compels a conclusion that the summary dismissal of W. A. Rumler by Carrier on August 7, 1970 without opportunity for notice and investigative hearing was a violation of Rule 70 of the Signalmen's Agreement. Close consideration of the alleged procedural irregularities regarding the later notice and investigation in September 1970, however, shows that they are not similarly supported by the record before us. In this connection we find that the notice in question was sufficiently precise to apprise claimant of the alleged dereliction of duty, he was represented at the investigation and suffered no prejudice by the form of the notice. See Awards 3270, 12898 et al. Nor does the record disclose improper conduct or bias by the Carrier official who conducted the investigation.

Notwithstanding the violation of August 7, 1970, it appears that the imposition of discipline on September 18, 1970 following the investigation of September 10, 1970 was based upon substantial evidence and was not arbitrary, unreasonable or capricious in the circumstances. Accordingly we shall not disturb the discipline assessed from and after September 18, 1970.

Inasmuch as we have found improper assessment of discipline on August 7, 1970 without opportunity to request or receive an investigation, we shall sustain part (b) of the claim to the following extent: Carrier should compensate claimant for all time lost between dates of August 7, 1970 and September 18, 1970, including overtime worked by his successor on the Sturtevant signal maintenance territory.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Part (a) of the claim sustained to the extent indicated in the Opinion.

Part (b) of the claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.