

NATIONAL RAILWAY ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20661

Docket Number SG-20191

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Erie Lackawanna Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company that:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 60, when it did not afford Leading Signal Maintainer S. A. Intersimone a fair and impartial investigation in connection with alleged charges dated November 5, 1971.

(b) Carrier should compensate Mr. S. A. Intersimone for all time lost, including overtime, resulting from the discipline of 10 days suspension.

/General Chairman's File: 425 -- Carrier's File: 199 Signalmen/

OPINION OF BOARD: At 3:20 P.M. on November 2, 1971, the signal and switch appliances at Millburn Interlocking failed to function. The claimant, contrary to posted instructions, improperly manipulated the equipment connected with the control of these appliances. The result was that Claimant defeated the "fail-safe" feature of the appliances and allowed commuter trains to pass through the signal with absolutely no protection being provided. An investigation was held at which Claimant admitted responsibility and based on this he was assessed ten days actual suspension.

The Organization claims that the Claimant did not receive a "fair and impartial hearing" because (a) the Carrier's Hearing Officer refused Claimant's representative's request to sequester witnesses and (b) because different officers of the signal department brought charges and acted as prosecutor, judge and jury. We shall deny this claim. Concerning the sequestering of witnesses, awards of this Division have held that unless a rule of agreement requires witnesses to be called to testify separately, it is not a violation of the employee's right to a fair and impartial hearing: this is especially so where there is no valid basis for exclusion propounded at the time of the hearing. Concerning the Organization's second contention, that the Claimant was not afforded a fair and impartial hearing because different officers of the signal department brought charges and acted as prosecutor, judge and jury, we find such contention contrary to many decisions of this Division, which hold that it is proper procedure for one officer to prefer the charges, another to hear the case and another to render the decision.

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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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1975.