

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21102  
Docket Number SG-21179

Frederick R. Blackwell, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Erie Lackawanna Railway Company

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

On behalf of Mr. A. J. Gioiello, Signal Maintainer, "DB" Interlocking New York Division, who was disciplined as a result of an investigation held on March 4, 1974, for five days' pay plus all overtime lost, and that his record be cleared of the charge. /General Chairman file: 514-A.J. Gioiello, New York Division. Carrier file: 228-Sig.7

OPINION OF BOARD: The Charge and Disciplinary Decision

Under date of February 27, 1974, the Claimant, Signal Maintainer Gioiello, was given the following notice of investigation:

"You are instructed to report to the Conference Room, Hoboken, N.J. 1000 hours (10:00 A.M.) Monday, March 4, 1974 for investigation in connection with delay to eleven (11) trains at DB Interlocking, morning of February 26, 1974, at which location you were both assigned on duty, such delays occurring due to your alleged failure to properly operate and maintain DB Interlocking appliances.

Mr. Gioiello is charged with alleged violation of General Notice, Rules B, B-1, 618 and 619, Rules of the Operating Department, and in accordance with Rule 33 may have a representative and witnesses present."

Following a March 4, 1974 hearing, the Carrier issued its disciplinary decision under date of March 14, 1974 as follows:

"Five (5) days actual suspension account your violation of General Notice, Rule B, B-1, 618 and 619, as contained in the Rules of the Operating Department effective October 25, 1964."

Parties' Position and Procedural Issues

The Employees seek to have the discipline set aside on the grounds that the Carrier violated two procedural requirements and that the Carrier's evidence failed to prove the charges against the claimant. The Carrier asserts that neither of these grounds is supported by the record.

The Employees' procedural arguments are (1) that the Claimant received notice of the investigation only two working days prior to the hearing, whereas Rule 33 of the Agreement requires notice of three working days and (2) that the hearing was conducted by an official other than the one prescribed by the prior practice concerning hearings. The Carrier does not dispute the facts underlying these objections, but asserts that the objections were not raised at the hearing even though the hearing officer asked at the hearing whether there was "any reason why this investigation should not continue." With regard to procedural objections of the kind here presented, prior authorities have held that objections not timely made at the hearing are "deemed to have been waived." Award No. 16121. The instant record does not establish the requisite timeliness of the objections and thus the objections cannot be considered in this appeal.

#### Facts on The Merits

As regards the merits, the herein incident arose during the Claimant Signal Maintainer's extra work at the "DB" Interlocking Plant, Greenwood Lake Junction, New York Division, from 10:30 P.M., February 25 to 2:30 P.M. February 26, 1974. The extra work was required because of snow conditions and the Claimant's duty was to help keep the switches in proper working order. At about 11:30 P.M. on February 25 and at 2:30 A.M. or 3:00 A.M. on February 26, the Claimant made a visual inspection of the plant. Pursuant to the Claimant's request, the towerman threw the interlocking switches during each of these two inspections and the switches were found to be in order in each instance. The snow stopped at about 2:30 A.M. on the 26th. Later, at about 7:00 A.M. on the 26th, after being notified by the towerman of a switch malfunction, the Claimant found that the switch at the east end of the "DB" Interlocking was aligned for a freight track and could not be aligned to permit a main track movement because snow had adhered to the switch points. The Claimant testified that the switch heaters were operating but that they had not prevented the build-up of snow, because the wind was blowing the heat in the opposite direction from the switch. He also testified that he discovered upon inspecting the switch that cement and other foreign material had dropped into the ties and around the points and that such materials probably caused the snow to accumulate faster than normal.

The Claimant took action to make the east end switch operative for a main track movement, but a delay to at least one train, possibly more, resulted while the switch was inoperative. The conductor of Train No. 1000, Dover to Hoboken, testified, that the inoperative east switch at the "DB" plant delayed his train twenty-six (26) minutes. A tally sheet from the Trainmaster's office lists delays to ten trains, including Train No. 1000, caused on the date in question by problems at the "DB" plant and two other locations.

Rules 618 and 619, Rules of the Operating Department, cited in the charge and read into the hearing record, read as follows:

Rule 618

"During cold weather the levers must be moved as often as may be necessary to keep connections from freezing."

Rule 619

"During storms or while snow or sand is drifting, special care must be used in operating switches. If the force whose duty it is to keep switches clear is not on hand promptly when required, the fact must be reported to the Superintendent."

Discussion and Findings

The Employees submit that the discipline should be vacated because the charges referred to the Claimant's responsibility for delays to eleven (11) trains whereas the hearing evidence shows delay to one train only, and because the rule violations cited in the charges are not supported by the evidence. The Trainmaster's tally sheet listed delays to eleven trains caused by problems at three different locations, but the sheet does not show which delay occurred at which location. Thus, the delay to Train No. 1000 at the "DB" plant, established by the Conductor of that train, is the only train delay clearly established by the hearing record. It is also noted that the Carrier's correspondence on the property makes reference to the fact that the investigation established that "Claimant was guilty as charged." However, these facts do not tend to invalidate the discipline in view of the Carrier's March 14, 1974 written decision which was rendered following the hearing. Since this decision states that discipline was dispensed because of the Claimant's violation of specified operating rules, without any reference at all to train delays, it cannot be said that the decision found the claimant responsible for the delays to eleven (11) trains. As for the Claimant's actions on the night in question, his own testimony establishes that he made no inspections of the switches after his 3:00 A.M. inspection until he was notified at 7:00 A.M. that a malfunction of the east end switch had occurred. The fact that everything was in regular order at the 3:00 A.M. inspection does not justify his failure to make further inspections. As the facts that the heaters were not effective and that the cement was causing a problem might have been discovered by a pre-7:00 A.M. inspection, the Carrier decided that the Claimant was derelict in his duty to help protect the plant by his failure to make such an inspection. The Carrier's decision in this regard and the disciplinary action is supported by substantial evidence in the record as a whole and there is accordingly no basis for disturbing the discipline. The claim will be denied.

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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. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1976.