

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21498
Docket Number CL-21367

David C. Randles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Robert W. Blanchette, Richard C. Bond
(and John H. McArthur, Trustees of the
(Property of Penn Central Transportation
(Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7979, that:

(a) The Carrier violated the Rules Agreement, effective September 1, 1949, particularly Article 27, when it assessed discipline of 10 days suspension plus 10 days suspended suspension, on E. Mattler, Block Operator at Devon Tower, Connecticut, New Haven Line of Penn Central Railroad.

(b) Claimant E. Mattler's record be cleared of the charges brought against him on July 31, 1974.

(c) Claimant E. Mattler be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Subsequent to an investigation held on August 7, 1974, Claimant was found guilty of violation of operation of control boards as contained in Rules CT-90 and F of CT-400. Claimant was assessed discipline of ten days' suspension from service plus a ten-day suspended sentence. At the time of the incident leading to the cause of the investigation, Claimant was the regular occupant of position as block operator at Devon Tower, Devon, Connecticut. Devon is within the location of catenary wire territory and when linemen's work is necessary in this area, catenary wires are de-energized by use of a remote control board located in Devon Tower. The board consists of control switches and red and green indicating lamps. A red light indicates the line is energized while a green light denotes the line is de-energized. The control board is operated by the telegrapher on duty at Devon Tower in accordance with the instructions of the lead dispatcher located at Cos Cob. At approximately 7:00 a.m., July 31, 1974, the block operator attempted to cut the power over Track 3; on the first try, the red light on the board went out but the green light did not go on. Claimant stated that it didn't look right and tried it again with the same result, except that the lineman, who asked that the line be de-energized so that he could perform maintenance work and who was standing in the tower with

Claimant, claimed that the green light was on faintly. Claimant again stated that it didn't look right, but nevertheless put the working device on and told the load dispatcher that the line was open and blocked. However, it was not open and when the electrical lineman tried to ground the 11,000 volt overhead wire he discovered the power was not off. Carrier argues that the foregoing description of events constituted a violation of Rule F. They state that "a reasonable man would have immediately contacted the Load Dispatcher regarding the apparent malfunction of the control board before he put the blocking device on and reported the line open to the dispatcher." We concur to the extent that a reasonable man should have immediately contacted the load dispatcher and we cannot minimize the responsibility of exactly following operating rules that are designed to protect life and property.

However, the facts of record establish some mitigation. Two attempts were made to de-energize the line to permit the electrical lineman to perform his work; he was in the tower when these attempts were made; he indicated that he thought the line indicators looked OK. The control board under these circumstances of operation was to have indicated no green light whatever. The green light was on faintly. The rule does require that the operator notify the dispatcher immediately because of a malfunction. Claimant should have notified the load dispatcher that he had only a faint green light before the lineman attempted to ground the line. It is apparent that the claimant violated the rule.

On this record, nonetheless, we find the discipline assessed to be excessive. From the totality of circumstances a reprimand or suspended suspension would have been adequate for purposes of the imposition of discipline. Accordingly, we will set aside the ten days' actual suspension and let stand the ten days' suspended suspension.

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 discipline be reduced.

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Parts (a) and (b) of the claim denied; part (c) of the claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.