

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22111
Docket Number SG-22119

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri-Kansas-Texas Railroad Company:

Appeal from the decision of Mr. B. D. Phillips, Signal Engineer, Missouri-Kansas-Texas Railroad Company, dated September 24, 1976, dismissing Signal Maintainer M. F. Madden from service, with a request that claimant be restored to service without loss of pay, and with all his rights unimpaired. [Carrier file 2619-70]

OPINION OF BOARD: By letter dated September 1, 1976, Signal Engineer B. D. Phillips advised the Claimant, Signal Maintainer M. F. Madden, to report for a formal investigation to develop the facts and determine responsibility, if any, for alleged violation of rules with regard to "derelict, negligent and indifferent attitude and handling of responsibilities as Signal Maintainer, Houston, Texas". The investigation was held on September 22 and 23, 1976. By letter dated September 24, 1976, Signal Engineer Phillips advised the Claimant that the evidence presented at the hearing substantiated the charges, and that he was removed from the service of the Carrier as of that date. By letter dated October 8, 1976, the General Chairman appealed the discipline assessed the Claimant to the Signal Engineer, B. D. Phillips. The Signal Engineer waited some 52 days to respond to the General Chairman and replied on November 29, 1976, that it was not proper for the General Chairman to appeal to the officer who had assessed the discipline; that it should have been appealed to the next higher official under Rule 71; and that such was fatal to the claim. The General Chairman filed an appeal with the next higher official by letter dated December 3, 1976. We find strictly limited to the narrow record of the instant case where the Signal Engineer waited some 52 days to respond to the General Chairman until just beyond the 60-day time limits of Rule 71, that such a sharp practice cannot be sanctioned by this Board. We find no time limit violation in the instant case.

In review of the record before us we find substantial evidence to support the Carrier's finding of responsibility in the instant case. We find that the time out of service should be converted to a disciplinary suspension, and that the Claimant should be returned to service with all

rights unimpaired but without compensation for time or benefits lost. The Claimant must be made aware that his reinstatement is his last opportunity to stay in the employment of the Carrier, and that any repetition of the matters involved in the instant case will most surely lead to his permanent dismissal from the service of the Carrier.

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 violated.

A W A R D

Claim sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1978.