

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22597
Docket Number SG-22561

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company:

On behalf of Mr. H. R. Hendrix, Signal Maintainer, New Albany, Miss., for compensation for all time lost between 4:00 p.m. November 18, 1977, and 8:00 a.m. December 5, 1977, when he returned to work, straight time rate for all regular assigned hours missed, 8 hours for holiday pay on November 24, 1977 at straight time rate, plus all overtime which was performed on his assigned territory, at overtime rate, between 4:00 p.m. November 18, 1977, and 8:00 a.m. December 5, 1977."

OPINION OF BOARD: An investigative hearing was held on November 2, 1977 to determine claimant's responsibility, if any, in connection with his alleged violation of Rule 588 of the Maintenance of Way Rules.

Claimant was found guilty of the asserted infraction and assessed a ten (10) day suspension without pay penalty.

Rule 588 which is referenced herein reads:

"Signal Maintainers shall be responsible for the safe condition, inspection, adjustment, and proper maintenance of signals, interlockings and other apparatus under their charge."

Carrier contends that the hot box detector at MPC - 577 & 21 poles did not operate properly from the time claimant last inspected and certified the detector O.K. on October 19, 1977 until it was corrected after the journal failed on the CTB on October 21, 1977.

Claimant argues that he followed all of the oral and written instructions in checking out the hot box detector on October 19, 1977 and it was working properly.

Our review of the investigative transcript reveals that claimant performed all of the tests required of him when firing the hot box detector and in the presence of several supervisors.

The October 24, 1977 letter from the Division C & S Supervisor to claimant et al., directing them to observe that shutters are operating properly after the completion of the inspection and the firing of the detector, reflected an ex post facto change in the inspection procedures.

Carrier, of necessity, has the right to promulgate and introduce new inspection modalities vis this activity, but not retroactively.

For many years claimant followed inspection procedures in the full presence of his supervisors which required that he hear shutters open on the hot box detector rather than see them. It was an audio rather than a visual determination.

To hold him accountable for a procedural change before it was introduced runs counter to the canons of acceptable due process.

For these reasons, we are compelled to sustain the claim for all time lost during the period of his 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 Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.