

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22902

Docket Number SG-22587

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Burlington Northern Inc.

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern;

Claim No. 1. (General Chairman file: TC-77-140.
Carrier file: SI-20 11/28/77 B)

On behalf of Signal Foreman R. D. Wick, Signal Crew No. 2, for reimbursement for the time lost and that his record be cleared of discipline assessed (fifteen calendar days actual suspension August 8-22, 1977) following investigation held July 6, 1977.

Claim No. 2. (General Chairman file: TC-77-141.
Carrier file: SI-20 11/28/77 C)

On behalf of Signal Foreman R. L. Dykhoff, Signal Crew No. 21, for reimbursement for the time lost and that his record be cleared of discipline assessed (fifteen calendar days actual suspension August 22-September 5, 1977) following investigation held on July 6, 1977.

Claim No. 3. (General Chairman file: TC-77-142.
Carrier file: SI-20 11/28/77 D)

On behalf of Interlocking Maintainer K. M. Johnson, Mississippi Street, St. Paul, Minnesota, for reimbursement for the time lost and that his record be cleared of discipline assessed (fifteen calendar days actual suspension August 22-September 5, 1977) following investigation held July 6, 1977."

OPINION OF BOARD: Claimants Wick and Dykhoff were called to repair Signal 2.0. They transposed wires, made no operating check, and thus failed to properly do the work assigned to them. Due to the improper operation of the signal, following the repair attempted by Messrs. Wick and Dykhoff, signal maintainer Johnson was called to check the trouble. He, too, failed to properly perform his work and Signal 2.4 then gave a false signal.

It is clear that all claimants did not follow proper procedures and made errors which would not have occurred had they done so. After each repair the signals were not operating as they were supposed to.

The Board has considered the arguments raised by the Organization on behalf of claimant Johnson and finds them to be without merit. He had worked this territory for some years, and knew, or should have known, of the operation of the circuits and the requirement for testing. His claim will be denied.

The defense of claimants Wick and Dykhoff is based primarily on a variance between the notice of investigation and the improper work done by them. The notice of investigation refers to Signal 2.4 displaying a "false clear signal." The defense of claimants Wick and Dykhoff is based on the assertion that they did not cause a false clear signal; that it was the faulty repair by claimant Johnson which caused Signal 2.4 to display a false clear signal. The Organization concedes that Wick and Dykhoff caused Signal 2.0 to show a false restrictive signal but it denies that they caused Signal 2.4 to show a false clear signal. Carrier asserts that with a train approaching Signal 2.0, Signal 2.4 would show green when it should show yellow and thus would display a false clear signal.

No doubt, as numerous Boards have held, Carrier must prove that the employee is guilty of the improper conduct he is charged with in the notice of investigation. This is not a criminal indictment and technical aspects cannot be permitted to rule, either in favor of the employee or the Carrier when reason and fairness can provide a sure guide. A balance must be struck between preserving substantial rights and following a mechanical formula. Here there may be some variance between the notice of investigation and the actual conduct of the repair. However, it is crystal clear that claimants were called to make a repair to Signal 2.0, they did not properly perform their work and the signal was not operating correctly because of their failure to do so. It may be, as Carrier states, that Signal 2.4 displayed a false clear after they reversed wires at Signal 2.0, or Signal 2.4 may have been unaffected, as the employees state. In any event signal maintainer Johnson was required to attempt to rectify claimants' mistake and his failure to do his work properly did result in a false clear at Signal 2.4. Under the particular facts and circumstances present here it was not improper for Carrier to discipline claimants Wick and Dykhoff for their failure to make a proper repair and test. The Board cannot resolve the factual question which is at the heart of the argument about the sufficiency of the notice of investigation. However, it can look at the entire circumstances and find that Carrier had grounds for applying discipline, and that claimants had a fair hearing as required by the Rules.

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1980.