

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23173
Docket Number SG-22870

Richard R. Kasher, 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:

Claim on behalf of D. R. Critten, Signal Maintainer, suspended from service for ten (10) days and assessed fifteen (15) days deferred suspension, due to an investigation held in Denison, Texas on June 2, 1978, with a request that claimant be paid for the ten (10) days he was suspended and his record cleared."

OPINION OF BOARD: Claimant, David Ross Critten, had a seniority date of September 5, 1972 and was employed as a Signal Maintainer when the instant dispute arose. His responsibilities included the inspection and maintenance of shunt wires.

On May 24, 1978, Claimant was contacted by a Federal Railroad Administration Inspector and taken to a switch at Itasca, Texas, where he was shown that the shunt wires were missing. Two days later the Carrier's Engineer-Communications and Signals notified Claimant to be present at an investigation to develop facts and determine responsibility for an alleged violation of the following rules:

"Circular No. DP-2, General Rules Governing Conduct of Employees in all Departments, effective January 1, 1974 and revised January 1, 1975

Rule D, Employees must not be ... (2) Negligent."

"Rules for the Maintenance of Way and Structures, effective May 1, 1947

Rule H, Employees who are indifferent in the performance of their duties ... will not be retained in the service."

The investigation was conducted on June 2, 1978 and the Claimant was subsequently notified that he was being assessed ten (10) work days actual suspension and fifteen (15) days deferred suspension for negligence and indifference to duty. The Organization initiated a claim by letter dated June 21, 1978, which alleged that Claimant did not receive a fair investigation and that the Carrier failed to carry its burden of proving a violation of Rules D and H.

The thrust of the Organization's argument that Claimant was denied a fair hearing was that the Carrier refused him the opportunity to cross-examine certain witnesses, particularly the Carrier officer who authored the notice of investigation. This Board finds that the Claimant was not denied due process by the refusal of the Hearing Officer to call certain witnesses. The Hearing Officer refused to call these witnesses because they had no knowledge of the incident under investigation. The General Chairman stated he wanted the men present "to explain the exact interpretation of the rules Mr. Critten (had been) charged with." However, an investigation is not a rules class and the charges were specific and unambiguous giving the Claimant precise notice regarding the alleged violations.

Regarding Claimant's alleged negligence and indifference to duty, the record discloses the following: (1) Claimant had a large territory to maintain; (2) Claimant had been occasionally assigned work out of his territory; (3) Claimant did not make inspections as frequently as he had been directed to; and (4) the shunt wires were missing from a switch at Itasca, M.P. 801, which was part of Claimant's territory.

[The Carrier has failed, however, to demonstrate that the Claimant was culpable in the matter] of the missing shunt wires. There was no indication of how long the wires had been missing or how they came to be missing. It was certainly possible that causes other than the Claimant's alleged negligence were responsible for the missing shunt wires.

Thus, this Board is left with the question of an appropriate remedy. Although the facts disclosed in the record do not excuse the Claimant's failure to make thorough periodic inspections, he is not to be held at fault for the more serious offense of the missing shunt wires. This Board, therefore, removes the ten (10) days actual suspension and allows the fifteen (15) days deferred suspension to stand. The Claimant shall be made whole for any earnings and agreement benefits lost as a result of the ten (10) days 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 was excessive.

A W A R D

(1) The ten (10) days actual suspension shall be removed and the Claimant made whole for any lost earnings and agreement benefits resulting therefrom.

(2) The fifteen (15) days deferred suspension shall stand.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.