

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23998
Docket Number SG-2410

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (former Lehigh Valley):

That Signal Maintainer M. A. Doyle be restored to service and be paid for all time and benefits lost since his suspension from service on May 9, 1980 and subsequent dismissal."

(Carrier file: System Docket 1511)

OPINION OF BOARD: Claimant, M. A. Doyle, entered the service of the Carrier as a Signalman Helper on May 5, 1972 and was subsequently promoted to Signal Maintainer. An investigation was held on May 16, 1980 in regards to the charge that Claimant failed to properly perform service in connection with revising the Krimpko Switch at Clark, New Jersey on May 8, 1980 resulting in a false indication being displayed to traffic approaching 191 Signal. Claimant was notified by Notice of Discipline, dated May 23, 1980 that he was "Dismissed in all Capacities."

Claimant's discipline was thereafter appealed up to and including the Senior Director-Labor Relations. The Senior Director-Labor Relations denied Claimant's appeal by letter dated July 8, 1980. Following a conference held on July 23, 1980, the Senior Director-Labor Relations reaffirmed denial of Claimant's appeal by a letter dated July 28, 1980. The Carrier maintains that testimony by Supervisor J. Stanko indicates that Claimant Doyle failed in his responsibilities as a Signal Maintainer. Mr. Stanko testified that Claimant Doyle did not receive permission for the work he was doing and that procedure required that Claimant receive permission. Mr. Stanko further testified that Claimant did not make the proper tests at the Signal location which would have avoided the incident.

Mr. Stanko's testimony is corroborated by the testimony of Assistant Supervisor F. Wilcewski. In addition, the Claimant admitted that he did not arrange to have proper switch point protection even though he knew that it was necessary to have such protection. Claimant Doyle testified as follows:

"Q: Did it have point protection? In other words, if the point was gapping, what kind of protection would you have to prevent the train from picking a point?

A: There would have been no protection if the point was gapped.

"Q: Are you aware that it is necessary to have a switch point protection on the switch?

A: Yes, I am."

Claimant Doyle further testified that he knew sufficient tests needed to be made after making revisions to Krimpko Switch. The Carrier maintains that sufficient tests were not made.

The Carrier maintains that the seriousness of an offense and the tragic events which may have resulted therefrom is a proper determinant in arriving at the degree of discipline to be imposed (Award Nos. 11887 and 14768). The Carrier further maintains that an employee's past record may be considered in assessing discipline (Award Nos. 6307 and 16244). Claimant Doyle had been disciplined twice before on November 25, 1975 and May 26, 1977.

The Carrier also maintains that the dereliction or negligence of others is not justification for the actions of an employee who also is derelict or negligent (Award Nos. 11555 and 13399).

The Claimant was allegedly in violation of "General Instructions C S 23 #7" as follows: "Alterations or additions must not be made to any individual components involving signal apparatus or circuits unless properly authorized." Claimant's notarized statement dated May 15, 1980 stated that he received authority "...to remove our stuff..." from Supervisor J. Stanko at approximately 7:15 A.M. on May 8. In addition, according to Claimant's statement, Mr. J. Savarese, the Carrier's Maintenance of Way Supervisor advised that the "...points, stockrail, circle-rail and frog would be coming out at Krimpko siding in Clark and it would be straight railed and this must be done today, May 8, 1980, no matter what." The Claimant also asserts that he notified Supervisor Stanko at 2:00 P.M. on May 8 of removal of the controller on the siding "...and that the HD and HHD wires were moved in the case at the cut section." Supervisor Stanko denied this assertion although he stated that Claimant Doyle had "talked about something."

Claimant Doyle was also charged with "Alleged violation-General Instruction C & S 23, #25-When any changes are made, sufficient tests shall be performed promptly to assure signal system is functioning as intended. All such modifications shall be recorded on C & S 4 by the responsible man making the changes." Upon restoration of the track, the Claimant conducted normal tests to assure that the governing signal was functioning as intended. However, unknown to the Claimant, a condition existed which caused a spurious signal aspect. The Claimant sought authority for overtime work to perform overtime tests but was unable to receive the necessary authority from Carrier officers.

The third Carrier rule allegedly violated by the Claimant is as follows: "Alleged Violation-Changes and Tests Incident thereto C & S 23, #257-Before Final cutoff, all circuits changed must be thoroughly tested as far as possible, and final arrangement must be tested in entirety by a supervisory employe other than the man in charge." Claimant maintains that supervisory personnel were aware of the "straight-railing" project and the associated signal circuit changes. The Supervisors, however, failed to comply with the provisions of Rules No. 257 and entire responsibility was attributed to the Claimant.

The Claimant maintains that it is improper for management to punish an employe for improper work performance when management had effectively "encouraged and abetted." (Award 7001)

The Claimant further maintains that Carrier's previous policy was one of not assessing more than ten (10) days suspension for similar offenses. The Hearing Officer, however, would not allow examination into this area.

Claimant maintains that the Carrier was at least equally responsible for the incident and that the Carrier acted arbitrarily and capriciously during the investigative hearing by restricting examination by the Claimant's representative.

Upon careful consideration of the record herein the Board finds that the discipline imposed under the circumstances was excessive. The Board notes that total culpability cannot be ascribed to the Claimant in this matter. Furthermore in a related case (Docket SG-24055) involving another employe, the Carrier imposed discipline of suspension and not dismissal.

Under these circumstances the Board reinstates Claimant without backpay and seniority and all other rights unimpaired.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of September 1982.

