

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24195
Docket Number SG-23803

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On May 30 and June 6, 1979, the Carrier violated the current Signalmen's Agreement, particularly Rule 60 (revised) during the investigation of Leading Signal Maintainer Vince Unger, and Signal Maintainer L. R. Wilson, both headquartered at DeKalb, IL, and subsequent discipline assessed to them.

(b) Carrier now be required to compensate Messrs. Unger and Wilson the actual time lost, which was thirty (30) days suspension, of the alleged charge, and also clear their record of the discipline, copy furnished this office."

(Carrier file: D-9-1-69, D-9-1-70)

OPINION OF BOARD: Beginning on March 5, 1979, Claimant Unger was assigned to the leading Signal Maintainer position and Claimant Wilson to the Signal Maintainer position on the newly combined territories of Elburn and DeKalb, Illinois. Prior to March 5, 1979, Claimant Wilson was the Signal Maintainer on a territory with headquarters at Elburn, and Claimant Unger was the Signal Maintainer on a territory with headquarters at DeKalb.

In a notice dated May 22, 1979, Carrier notified Claimants, in separate letters, to attend an investigation on the charge:

"Your responsibility, if any, for failing to properly maintain signal equipment and making proper inspections and reports on your territory as evidenced by FRA-DOT inspection on May 18, 1979 between Elburn, IL and DeKalb, IL."

Following the investigation hearing on May 30, 1979, both Claimants were suspended for 30 days.

The Organization first argues that the notice was vague in that the charges were not specific and impaired Claimants' rights to a fair investigation as provided for in Rule 60. In this regard, the Organization contends that the territory was 16 miles long, and there was nothing in the charge nor had Claimants been furnished with information prior to the investigation as to what equipment was not properly maintained, what reports were not made, or what area between Elburn and DeKalb was involved. We do not agree.

It is clear from the record that on May 18, 1979, an FRA inspector found six (6) violations and 22 defects on the Claimants' territory, related to non-performance or poor performance of required inspections. On that same day, Claimants were told of and shown by their supervisors the violations and defects found concerning the signal equipment not properly maintained at DeKalb. The next morning, they were notified of the remaining violations and defects at Cortland and Maple Park. Furthermore, the record shows that Claimants began making the necessary repairs immediately, that all violations were repaired within 24 hours, and all defects, except one, were taken care of as of the date of the investigation on May 30. The Board is therefore satisfied that Claimants and their representatives were fully aware of the subject matter under inquiry; indeed, the Claimants stated that they were prepared to proceed with the hearing. As this Board has long held, a notice of charge is sufficient if it reasonably apprises the employee of the set of acts under inquiry and permits him to prepare a defense without the element of surprise; in short, the notice must not prejudice the right of the employee to due process. See, e.g., Third Division Awards 22396 and 19745. In this case we do not believe that Claimants were unaware of the precise signal equipment, inspections and reports under investigation.

The Organization's remaining defenses relate to the arguments that Claimants were on "snow duty" from mid-January to the end of February, 1979, working 12 hours a day, and did not have time to perform routine signal maintenance duties; that Claimants received no help; and that Carrier left the territory without regular relief during Claimants' absences. These arguments do not compel the Board to reach a different conclusion based upon the record presented. In the first place, the FRA inspection took place on May 18, more than 1-1/2 months after the snow, and the record does not support finding that the deficiencies noted in May could be attributed to the snow. Claimant Unger made an inspection report on April 29, subsequent to the snow, certifying inspection of the switches at DeKalb and that they were in proper condition. There is nothing in the record to indicate that the work could not have been done in March, April or May. In fact, as noted, all the repairs were completed between May 18-30.

If proper inspections had been made, the items which led to violations could have been corrected. Claimant Wilson acknowledged that he did not make the necessary inspections in 1979. With regard to the argument that no help was provided, the record shows that the FRA inspector covered the entire territory from Elmhurst to DeKalb, and found no violation in territories assigned to other signal maintainers, who were able to maintain their territories in accordance with FRA standards without assistance.

Having found substantial evidence in support of the conclusion reached by Carrier, this Board will not upset the penalty meted out by Carrier unless it clearly appears that the disciplinary action was unjust, unreasonable or arbitrary. In this case we do find Carrier's discipline imposed was commensurate with the offense and not improper in any respect.

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 Employee 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.