

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24231  
Docket Number SG-24262

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ The Washington Terminal Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Washington Terminal Company:

Appeal of discipline (20-day suspension) assessed R. J. Dunivin."

OPINION OF BOARD: The specific charges upon which discipline was based were:

- "1. Dereliction of your duties and responsibilities of a Leading Maintainer C&S, 12:00 Midnight to 8:00 a.m., K Tower, when at approximately 7:05 a.m., Thursday, December 25, 1980, you failed to respond to a 'Maintainer's call' from 'K' Tower which had 460 Switch fail to go to the reverse position at 'C' Interlocking. Further when the Maintainer C&S that had gone out on the switch failure called for assistance at approximately 7:25 a.m., you left your assignment, and subsequently left the property.
2. Violation of The Washington Terminal Company General Rule 'N', that part which states, 'falsifying reports, is prohibited,' when you filled your time card out for a full eight (8) hours, showing you worked from 12:00 Midnight to 8:00 a.m., on December 25, 1980, when in fact you left your assignment at approximately 7:25 a.m., December 25, 1980.
3. Violation of The Washington Terminal Company General Rule 'O', that part which states, 'No employee will be absent from duty, have a substitute perform his duties, without permission', when at approximately 7:25 a.m., December 25, 1980, you left your assignment and turned it over to your relief without permission, when your tour of duty is from 12:00 Midnight to 8:00 a.m."

Hearing on charges set for December 31, 1980, was actually held on January 7, 1981, the delay due a request by the Brotherhood. At the hearing Claimant was represented by Vice President J. Hansen who participated in questioning witnesses.

Round-the-clock coverage by signal maintainers is required at the Washington Terminal due to the complexity of signal apparatus for the heavy train traffic. It was clearly evident that the signal maintainers had a long

standing unwritten practice of relieving each other early to take advantage of transportation needs. All of the employees testified as to the existence of the practice.

Claimant was assigned as lead signal maintainer from midnight to 8:00 A.M. on December 25, 1980. He was assisted by Maintainer Skiles. At 7:05 A.M., a trouble call was received by Claimant at the signal shop of switch malfunction at C Tower. His partner, Skiles went to the scene of the trouble because it was his turn, in accordance with their practice. On arriving at the scene of the trouble at 7:15, Mr. Skiles first thought the trouble to be electrical. He later determined the trouble was a frozen switch. He called by telephone to the Claimant advising he would need assistance. This call was made at 7:25. During this period, the Claimant called via radio to Mr. Skiles asking if he needed any tools or equipment.

Mr. Rhodes, lead maintainer on day shift had assigned hours of 7:30 to 4:00. He arrived at the Signal Shop at about 7:05 and overheard the conversation when the trouble call came in. He was told of the switch failure at the time and saw Mr. Skiles leave the shop to respond to the call. At about 7:25 Rhodes relieved the Claimant and proceeded to the scene of the trouble. The following conversation occurred as to Rhodes taking over responsibility:

"I would say approximately 7:25 he said 'you got it.'  
And I said 'yes, I am going out.' I meant going out to  
the failure.

Q. When you said 'yes I got it,' does that mean he was relieved?

A. I took it for granted I relieved him at that time.

Q. Did you have permission from anyone to relieve him early?

A. No, sir."

At that point, about 7:30, Claimant left the shop, went to his car and presumably left for home. Mr. Rhodes, on leaving the signal shop went to the scene of the trouble. He took a bar to help in correcting the trouble. Mr. David Flanders, signal maintainer on the day shift, assisting Mr. Rhodes, had assigned hours of 8:00 to 4:00. He arrived on the job about 7:40 and learned immediately about the switch failure. He was advised Mr. Rhodes wanted him to bring fuses as soon as possible. He proceeded to comply and went to the scene of the trouble by shuttle.

The Maintainers' Daily Report on the incident was filled in by Mr. Skiles on December 26, the day following the incident, and was signed jointly by Claimant Dunivin and Skiles. This was also in accordance with established practice. The report showed 460 switch failed to go in reverse position due to frozen cylinder. It was thawed, blocked and spiked permitting Amtrak Train 102 to depart 45 minutes late. Claimant testified repair of the trouble could not have been shortened because a frozen switch takes just so much time to thaw, the length of depending on the extent of the freeze.

There was no evidence the trouble could have been remedied any faster by Claimant being on the scene rather than Mr. Rhodes, his relief. Claimant was berated for not checking on trains being delayed as a result of the malfunction. His response was that his concern was to get the trouble corrected, not to check on train delays. This would seem to be in accord with his responsibility as lead signal maintainer.

All of the signal maintainers involved in the incident testified as to the existence of the practice of relieving early; Rhodes with 32 years service, Claimant with 6 years, Skiles with 4 years. No testimony was given to the length of Flanders' service.

Mr. Dumivin filled out his time card for the shift as having worked from midnight to 8:00 A.M. whereas he admitted working from midnight to 7:20 A.M. He testified that he signed his time card as working 8 hours as was normal practice in the Signal Department to fill out the card for the normal 8 hours. He stated he had been relieved at 7:20 A.M. He also stated he knew the trouble was still a problem at that time but stated Mr. Rhodes, a fully qualified Leading Signal Maintainer was going to assist on the job. On the matter of the practice of leaving early the following testimony is highly relevant:

"Q. To your knowledge, did Mr. Rhodes have permission to relieve you early?

A. I have no idea.

Q. Mr. Dumivin, have you ever seen instructions allowing the practice of leaving early?

A. No, sir; but it has been a normal practice.

Q. But you have never seen instructions allowing this?

A. No, sir.

Q. Have you ever been told by anyone in authority you were allowed to leave early?

A. Yes, sir.

Q. As a common practice?

A. As long as a qualified man was there to take my position, I had unwritten permission to leave as long as my job was filled by a qualified man and only if the man agrees to take the responsibility.

Q. But this is verbal and nothing in writing?

A. Yes, sir."

The Claimant was disciplined numerous times during the period 1976-79 and this record was entered into evidence at the hearing by Carrier. The discipline assessed in this case was based on a Carrier finding the Claimant guilty of failing to act responsibly as a lead signal maintainer. On charges 2 and 3 he was suspended for 10 days on each. Appeal to this Board is against these suspensions. No appeal was made to this Board on his disqualification under Charge No. 1 which was later rescinded.

In explanation the Carrier contends it was totally unaware of the procedure of relieving early and that if such a procedure existed, it was instigated by the employees without verbal/written permission of the Carrier. Carrier also contends the discipline was in no way arbitrary or capricious and that it was commensurate with the offenses committed, "especially when one considers the Claimant's discipline record".

From a practical point of view it is quite understandable that with round-the-clock coverage a practice of relieving early would be followed. It also appears reasonable that, with such a procedure, employees assigned to regular shifts of 8 hours would fill out time cards and work reports for the assigned hours rather than the exact minutes when they actually went on and off duty. In view of the evidence reviewed herein it is hardly credible that "management was totally unaware of the procedure of leaving early". As a matter of fact, Claimant's testimony that he had been given verbal permission to leave early was not refuted during the hearing.

There is no evidence that any of the employees were negligent in dealing with the trouble call. Skiles, whose turn it was to take the call, did so promptly. The call came in at 7:05 and he was on the spot of the trouble by 7:15 to 7:18, having gone from the Signal Shop to C Tower, the scene of the trouble. After checking into the trouble he called the Claimant for assistance at 7:25. In addition, the Claimant at some time during this period called Skiles via radio asking if he needed any tools or other equipment. At 7:25 Mr. Rhodes took over responsibility for the work and relieved Claimant. Moreover, Flanders, the day shift maintainer under Rhodes, whose assigned hours were 8:00 to 4:00 started work at 7:40. By his own testimony he stated:

"Stan Rhodes had called down to Todd Cummings asking me to bring some fuses (sic) out to him as soon as I could. So I jumped on the shuttle, proceeded out to him and proceeded to work with him."

This was not a case of the night shift employees neglecting their duties and rushing so they could leave early. On the contrary, their actions manifested awareness of the need for continuous coverage of a critical operation and all of them, the day shift and night shift alike, performed in accordance with established practice. The night shift crew did its job until relieved by the day crew. The fact that the times involved did not exactly correspond with their assigned hours did not deter them from meeting their responsibilities.

The stance of the Carrier in this case is not clear. In the first place the charges against the Claimant were made over the signature of C. G. Eicher,

Terminal Engineer and Department Head. Yet, at the hearing all the testimony was given by signal employees directly involved, and all testified as to the established practice of relieving early. It is of material importance that all of these employees, except the Claimant were directed to participate in the hearing as Company witnesses. No management representatives testified in refutation. It is noted the hearing was held on January 7, 1981 but no statement in the record claiming Carrier ignorance of the practice was made until February 2, 1981. Such statement was first made in Mr. Shaw's letter following an appeals conference as follows:

"Carrier is totally unaware of such a procedure and that, if such procedure existed, it was a procedure instigated by the employees without verbal/written permission of the Carrier. With respect to this so-called procedure, Carrier would call your attention to pages 11, 18 and 19 of the Transcript."

Testimony on the pages referred to deals with statements of Claimant and Mr. Rhodes, confirming the practice of relieving early; nothing in denial of its existence by the management. Thus, the record of the investigation hearing, conducted under Article 6 of the Labor Agreement, stands without any evidence to support Carrier's contention of ignorance of the practice. There was no doubt in the testimony of the employees as to the practice being well established. Why the Carrier failed to testify as to its alleged ignorance of the practice is not clear. In view of the evidence Carrier's claimed ignorance of the practice is manifestly incredible. It would appear the Carrier was willing to go along with the practice despite the prohibitions in General Rules N and O. That the practice was freely, openly and unanimously admitted by the employees supports a conclusion that it was condoned by management. Especially supportive of this conclusion was Claimant's testimony that he had been given verbal permission to leave early as long as there was a qualified relief man available and willing to take the responsibility. This condition was met and his testimony stands unrefuted on the record.

Having given its blessing verbally and/or by condonement to the long established practice it is neither fair nor just to suddenly turn the tables and assess discipline by insistence on the letter of General Rules.

Carrier contends the discipline was in no way arbitrary or capricious. Also, that the discipline was commensurate with the offenses, especially when one considers Claimant's discipline record. We might agree on the propriety of taking prior discipline into account if we were convinced Carrier's findings of guilt were fair and just. But we do not agree. The evidence developed in the investigation hearing does not support such findings. The established practice of relieving early and making out reports for regular assigned hours is well established on the record. That the practice was condoned by management in preference to General Orders N and O is also convincingly established on the record. For these reasons it is the judgment of this Board that it was arbitrary, capricious, unfair and unjust to disclaim knowledge of the practice and resort to those rules in support of its disciplinary action. Carrier is directed to rescind the disciplinary actions covered by the claims and reimburse Claimant for pay lost during the period he was suspended from service.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

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

