

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24284
Docket Number SG-24261

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines):

On behalf of Signal Foreman C. G. Baxter, who was suspended ten days July 14 through 23, 1980, and Signal Maintainer G. A. Widmann, who was suspended five days July 14 through 18, 1980, for pay for time lost, and that all mention of this matter be removed from their records." (Carrier file: MofW-A-TUC-O-15)

OPINION OF BOARD: At the time this dispute arose, Claimant, C. G. Baxter, had been a Signal Foreman with Carrier for approximately seven years. Claimant, G. A. Widmann, had been a Signal Maintainer with Carrier for approximately five years.

On April 9, 1980, both Claimants were dispatched to repair Signal 7344A at Carrier's yard at Yuma, Arizona. On May 1, 1980, Signal Operations Manager, W. W. Graves, inspected the signal. He noted that it displayed green and red aspects when it should have displayed only yellow and red aspects. Graves corrected the problem by rewiring the signal, which apparently had been incorrectly wired.

As a result of this incident, Claimants were required to furnish written statements concerning their conduct on April 9, 1980. Subsequently, a formal investigation was conducted on June 24, 1980. Based upon the results of that investigation, Claimant Baxter was suspended for ten (10) days, from July 14 through July 23, 1980; Claimant Widmann was suspended for five (5) days, from July 14 through July 18, 1980.

The Organization contends that Carrier violated Rule 59(a) when it suspended both Claimants. That rule requires that an employee may not be disciplined without a fair and impartial investigation during which the employee may be represented. According to the Organization, Carrier violated Rule 59(a) when it required Claimants to submit written statements prior to the formal hearing held on June 24, 1980. These statements were obtained without the presence of Organization representatives. Thus, in the Organization's view, Carrier conducted an unfair investigation by denying Claimants an opportunity to have representation when the written statements were submitted.

As to the merits, the Organization contends that Claimants were required to perform their work without circuit plans and without specific instructions from supervisory personnel. In its view, any inadvertent error committed by Claimants in wiring the signal was the fault of Carrier and not the Claimants

themselves. In fact, the Organization points out that Claimant rewired the signal in the same manner that they discovered it. According to the Organization, the Claimants used the information available to them in the performance of their duties and they should not now be penalized because Carrier failed to furnish them with adequate instructions.

For these reasons, the Organization asks that the claim be sustained. It seeks the restoration to Claimants of all lost wages and benefits as a result of their suspensions, as well as the removal of any mention of this incident from their records.

Carrier, on the other hand, asserts that it properly imposed the ten and five day suspensions on Claimants Baxter and Widmann, respectively. First, Carrier contends that the written statements required of Claimants did not violate Rule 59(a) of the Agreement. This is so because that statement did not form the basis of any discipline which Carrier later imposed. Rather, Carrier insists, discipline was imposed only after a fair and impartial investigation took place wherein Claimants were fully represented by the Organization.

As to the merits, Carrier argues that Claimants improperly failed to test the signal after they allegedly repaired it. Furthermore, Carrier points out that a signal diagram was housed in a relay box near Signal 7344A. According to Carrier, if Claimants had consulted the diagram, they would have realized that the signal, when properly wired, should display only a yellow or red aspect and not the green or red aspect which resulted from Claimants' rewiring of it. Therefore, Carrier concludes that Claimant's repair of Signal 7344A was negligent. It asks that the claim be denied.

The record evidence reveals that Claimants clearly acted improperly in rewiring Signal 7344A on April 9, 1980. First, Claimants knew or should have known that a circuit diagram could be found near the signal. This is particularly true of Signal Foreman Baxter who had occupied a position of authority with Carrier for seven years prior to this incident. In fact, neither Claimant even attempted to look for a circuit diagram which, if discovered, would have instructed Claimants how to properly wire the signal.

Second, the record also indicates that Claimants did not properly test the signal after they had repaired it. Carrier had a legitimate right to expect that Claimants, particularly Signal Foreman Baxter, would have conducted the same tests which Signal Operations Manager W. W. Graves performed when he discovered the error on May 1, 1980. Simply stated, then, Claimants were negligent in their repair of Signal 7344A on April 9, 1980.

We reject, also, the Organization's procedural argument.

There remains the question of the appropriateness of the penalty imposed upon Claimants. It appears to this Board that Carrier may hold a Signal Foreman to a higher standard of conduct than a Signal Maintainer. A signal foreman is presumed to have greater knowledge and authority in the performance of his or her work than is a Signal Maintainer. Moreover, a Signal Foreman is specifically charged with conducting "thorough tests to insure that apparatus and circuits are properly functioning" (Rule M 623 of the Rules and Regulations for Maintenance

of Way and Structures). That rule does not pertain to Signal Maintainers. Finally, we note that Signal Foreman Baxter worked for Carrier five years longer than did Signal Maintainer Widmann. Accordingly, we conclude that the penalty imposed upon Signal Foreman Baxter was appropriate while the five day suspension imposed upon Signal Maintainer Widmann was excessive. In our view, a letter of reprimand to Signal Maintainer Widmann is appropriate under the facts of this case.

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 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 - Administrative Assistant

Dated at Chicago, Illinois, this 31st day of March 1983.