

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24493
Docket Number SG-24507

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company that:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly the discipline rule (Rule 700), when on January 30, 1981, it dismissed Signal Maintainer F. Batchelor, headquartered at Muskogee, Ok., without just and sufficient cause and on the basis of unproven charges either before or during the investigation held on February 6, 1981.

(b) Carrier should now be required to reinstate Signal Maintainer F. Batchelor to his former position at Muskogee with all rights and benefits unimpaired; compensate (sic) him for all lost time from January 31, 1981, until he is reinstated; clear his personal record of any reference to this matter." (Carrier file K 315-302)

OPINION OF BOARD: By notice dated January 30, 1981 Claimant, Signal Maintainer Francis Batchelor was advised to attend an investigation on February 6, 1981 to develop facts and place responsibility, if any, with respect to his alleged failure to properly test and inspect highway crossing protective devices in his assigned territory. On February 11, 1981 Claimant was notified that as a result of the investigation he was dismissed from service. After appeal by the Brotherhood on property up to and including the Carrier's Director of Labor Relations the Claimant was subsequently reinstated, on leniency basis, to a Signaller's Position on the Signal Gang in Wagoner, Oklahoma effective September 8, 1981.

A review of the record before the Board shows sufficient evidence to warrant conclusion that Claimant is guilty as charged. Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197,229). Claimant's assignment with the Carrier dealt primarily with the maintenance of railroad crossing protective devices. Testimony from the investigation established that Claimant was negligent in filling out forms which must be completed by a Signal Maintainer as evidence that a crossing signal had been inspected; absence of such evidence reasonably permits conclusion that inspection had not been made in the first place. In an assignment so important to the safety of both the public and fellow employees of the Carrier itself, the Board finds unacceptable the Claimant's rebuttal that he may not have signed the form(s) after inspection because he might not have had a pencil, or that he had forgotten to sign such forms at the time of inspection. Further, the Claimant had been warned of negligence prior to the facts which set in motion the instant case. Consistent with prior Awards (Third Division 19607; 21800; 22819 inter alia) this Board does not condone carelessness and will not, therefore, in the instant case disturb discipline

assessed by Carrier. With respect to the investigative hearing itself, there is no evidence of probative value to permit conclusion that actions of Carrier were unjust, unreasonable nor arbitrary.

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

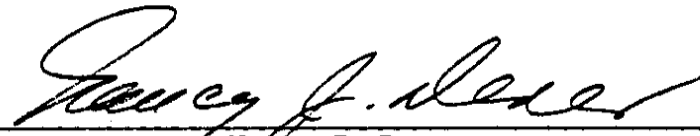
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1983.

