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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24848  
Docket Number SG-24581

George V. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of  
Railroad Signalmen on the Burlington Northern, Inc.:

On behalf of Assistant Signalman Pete Molenda, Crew 339, Billings, Montana, for all time lost as a result of discipline assessed following investigation held November 3, 1980, and any reference to that investigation be cleared from his personal records. (General Chairman file: B-81-240. Carrier file: Sl 81-3-24).

OPINION OF BOARD: The Claimant, Assistant Signalman, Pete Molenda, was assigned to work with a CTC Maintainer to locate a problem along a pole line. While so engaged they left a motor car unattended on the main track and it was struck by a work train destroying the car.

After a hearing, the Carrier suspended the claimant for a period of 30 days for violation of Rules 40 and 74 and entered a notation to that effect in the claimant's personal record.

The Employees, on behalf of the claimant, assert that:

- "1) Carrier violated Rule 2F when it held claimant responsible.
- 2) The Maintainer did not read the line-up to claimant.
- 3) Claimant was following directions of the Maintainer.
- 4) The Maintainer did not tell claimant to be on the lookout for the train.
- 5) The discipline rendered was cruel and unjust."

They allege further that the Carrier erred procedurally in that it was not specific in charges against the claimant.

Dealing with this last allegation first, there is nothing remarkable or improper in the Carrier's notice of investigation. It specified that Claimant is to attend "for the purpose of ascertaining the facts and determining responsibility in connection with your motor car BNX 3658 being struck by Work Extra 1925 at approximately 2:00 P.M. October 22, 1980 at MP 122". Based upon the testimony at the hearing the Claimant was then suspended "for violation of Rules 40 and 74 of the Rules of Maintenance of Way Department". There is nothing out of the ordinary in this and certainly does not constitute a procedural error for lack of specificity.

The other allegations deal with Claimant's culpability and similarly must be dismissed. By the Claimant's own admission he violated Rule 40:

"78. Q. Mr. Molenda, Rule 40 of the 'Burlington Northern Rules of the Maintenance of Way Department' Operating Department Form 15125 reads as follows:

'The time of all trains must be cleared no less than 10 minutes. If the line-up indicates a scheduled train is running late, the late time will be used. In figuring the time of any train between station the maximum authorized speed for the train will be used. Only train location time issued by train dispatcher can be used in clearing trains. Train movement information from any other source must not be used in clearing trains.'

Did you comply with Rule 40?

A. No."

With respect to Rule 74, although the Claimant denies that he violated it, in the next breath his statement is an admission of guilt.

"79. Q. ...

Did you comply with Rule 74?

A. Yes.

80. Q. Did you leave your Motor Car on the main line unattended?

A. No, we were fairly close, by the time we noticed it, the train, it was still too late to do anything."

The Employees argument on behalf of the Claimant that he was ignorant of the line-up or only following the directions of the Maintainer is specious. The Claimant had been examined on the rules and qualified to carry out his responsibilities in a safe manner. To hold him blameless for any untoward occurrence would be to exempt him from exercising proper care in the performance of his duties. This the Board will not do; the Carrier's action is upheld.

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 Employee 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.

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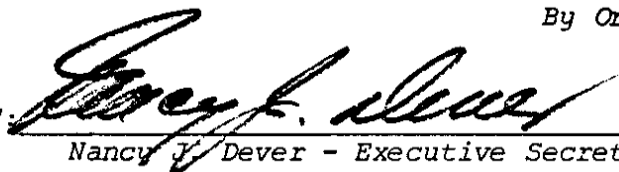
Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984