

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25148
Docket Number SG-24093

Wesley A. Wildman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Burlington Northern Inc.
(Former St. Louis-San Francisco Railway Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company.

On behalf of Signal Maintainer S. P. Schultz for all lost time between 5:00 p.m., March 12, and 8:00 a.m., March 27, 1980, during which he was suspended for allegedly violating Carrier Operating Rule 222. [Carrier file: PR-SCHULTZ, Stephen, P.]

OPINION OF BOARD: Claimant in this case is a Signal Maintainer assessed a 10 working day disciplinary layoff for allegedly being at fault in allowing his motor car to be struck by a regularly scheduled train on main track.

First, the Organization representing Claimant asserts that the handling of this case on the property was tainted as a result of the fact that the same Carrier official issued notice of investigation, conducted the hearing and rendered the initial decision. It is a well established principle that there is, of course, nothing inherently or per se prejudicial in this not uncommon practice. When there is a "multiplicity of roles" played by a single carrier official in the handling of a discipline case, this Board looks primarily to the question of whether, as a result, a Claimant's ability to make a full and adequate defense was prejudiced or whether there was a material denial of any aspect of due process to which a claimant has a right. We find no evidence on the record that such was the case here.

Next, the Organization claims that the transcript of the hearing "on the property" is so consistently garbled and incomprehensible it is inadequate in its entirety as a document to be used as the basis for the imposition of discipline.

In our industry, investigatory hearings are conducted by, and are largely within the control of, the carrier. As has been universally recognized, this fact places a heavy duty and responsibility on a carrier to provide a fair and adequate hearing in every sense. Part of this duty, given the significance of the appeals process in railroad discipline cases, is to observe high standards in assuring that a reasonably accurate and precise record is preserved of what transpired at the hearing. The transcript in this case is indeed deficient in this regard and comes quite close to falling below minimally acceptable standards; we do not, however, find it fatally flawed as a document to be used as the basis for the imposition of discipline in this instance.

The record does clearly indicate that Claimant had in his possession an appropriate time table and had secured a relevant line up on the trains for the day on which the accident occurred. Substantial evidence, accessible enough even on this record, further establishes that Claimant's motor car was indeed struck on the main line by a regularly scheduled train noted on both the time table and the line up, at a time which clearly could and should have been calculated and anticipated by Claimant. Claimant's excuse that the train which struck his motor car usually ran late is not a defense. Accordingly, we find Claimant's fault adequately proved on this record.

As a 10 working day disciplinary suspension for this incident does not seem to us inherently excessive or unnecessarily harsh, and as there is no conclusive substantial evidence on the record supporting the Organization's assertion that this penalty is contrary to established practice of Carrier in cases of this kind, we allow the quantum of discipline imposed here to stand.

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 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 9th day of November 1984.

