

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25150
Docket Number SG-24128

Wesley A. Wildman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of John Koran, Jr., for all time lost from February 22, 1980, until Mr. Koran is reinstated with all rights and benefits.
[Carrier File No. 013-220-K]

OPINION OF BOARD: Claimant in this case is a Signal Maintainer removed from service for alleged misfeasance in the performance of his duties and subsequently reinstated seven months later.

First, the Organization representing Claimant asserts that Claimant's defense was fatally compromised by the vague and imprecise charge made against him which was comprised primarily, says the Organization, of nothing more than frequently erroneous citation of inappropriate rules claimed by Carrier to have been violated. It is true that no evidence was offered by Carrier with respect to violation of one of the initially cited rules; the charge in this regard was ultimately withdrawn. The record also discloses that there was some carelessness in the citation of allegedly relevant rules in the initial charge (transposition of numbers within a sequence, the omission of a paragraph designation, etc.). We find, however, that these were technical inaccuracies only and that Claimant was not misled or otherwise prejudiced as a result of the errors. It is apparent that Claimant and his representative were clearly aware of the substance of the charges against Claimant at the time of the hearing. All relevant rules were read to Claimant at the outset of the hearing and Claimant acknowledged being conversant with them. No request was made by Claimant or his representative for a continuance of the hearing based on a claim either of surprise or inadequate preparation of defense resulting from vagueness of charge.

Second, the Organization charges procedurally fatal prejudgment of the case by the Carrier official conducting the hearing, allegedly evidenced by the fact that the initial finding by Carrier against Claimant was issued by said official before the transcript of the hearing was available for study and review. As has been observed in prior decisions of this Board, while the rendering of a decision in a disciplinary case by Carrier before review of the hearing transcript may not necessarily constitute desirable or "best" practice, it is not procedure which is per se prejudicial or conclusively indicative of prejudgment. We do not find that this action constituted a denial of Claimant's due process rights in this case.

With respect to the specific alleged misfeasance which precipitated Claimant's removal from service, it is asserted by Carrier that he failed to properly adjust a track blooper circuit in a highway crossing protection system, that he did not properly maintain the battery in the system or safety test the system, and that he left the resulting malfunctioning crossing gates unprotected, all in violation of various applicable rules of Carrier.

Evidently, the inadequately maintained, dry battery was the cause of the malfunctioning blooper circuit which in turn resulted in the gates at the crossing in question being inoperative. Apparently, this was not evident to Claimant even after examination, test and attempted repair, and was only confirmed to be the case by Claimant's supervisor who was called out to inspect the gate some hours after Claimant determined he was faced with a problem he could not resolve. With regard to this incident there is substantial evidence on the record to sustain Carrier's finding of palpable and obvious misfeasance in battery maintenance (violation of Rule 1653).

In connection with this malfunctioning gate incident Claimant was additionally charged with violation of Carrier Rules 1602 (prompt notification of supervisor in event of inability to repair signal), 1613(A) (obligation to test after completion of repair), and 1667 (injunction not to leave a defective signal unit until repaired). With regard to the alleged violation of these rules, the evidence on the record indicates that while Claimant did not totally ignore the inoperative crossing gates and was not displaying a wholesale indifference to, or callous disregard of, the obligations imposed by these rules, he was not meeting his commitments with sufficient concern and dutifulness, and was making, at best, ineffectual and misguided attempts to meet the problem. For instance, he did leave the inoperative signal unattended for a considerable period of time claiming he had trouble with his truck, was looking for a pay phone, etc., and, while, ultimately, he did report to supervision as required by Rule 1602, he did not act with sufficient dispatch given the seriousness of the difficulty posed by the malfunctioning gate.

Finally, Carrier more generally charges Claimant with dereliction of duty with respect to the maintenance (watering) of batteries throughout his service area resulting in part (it is assumed by Carrier) from a claimed excessive rate of absenteeism on Claimant's part over a period of some months. The evidence on the record indicates that Claimant had been absent from work eleven days over the four-month period preceding the blooper circuit incident which led to his removal from service and that he had been warned that his absenteeism was considered excessive by Carrier. While no causal link is established on the record between Claimant's absenteeism on the one hand, and the neglect of the batteries in the signals under his care on the other, there is, however, substantial credible evidence on the record that such neglect did occur.

In sum, we find that there is substantial evidence on the record to sustain Carrier's charge of significant carelessness, inattention to important duties, and misfeasance generally with regard to both the malfunctioning gate incident which precipitated dismissal and the broader charge of the neglect of Claimant's service area generally over time. Further, given the seriousness of the charges and their relationship to the safety of Carrier's employees and the public, we do not find the discipline resulting from Claimant's removal from service and subsequent reinstatement some months later to be arbitrary, capricious or unnecessarily harsh.

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.