NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25184
THIRD DIVISION Docket Number SG-25398

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Boston and Maine Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Boston and Maine Corporation:

On behalf of Signal Maintainer E. T. Perin, who was suspended August 9 through 20, 1982, by notice dated August 6, 1982, that this discipline be stricken from his record and that he should be compensated in full for the twelve (12) day suspension served. [Carrier file: Claim SI-4-82]

OPINION OF BOARD: The Claimant received a notice, dated July 19, 1982, to attend a hearing on July 28, 1982, to develop facts and determine responsibility, if any, in connection with his alleged failure to properly test a signal on June 11, 1982. After the hearing was held as scheduled the Claimant received Notice E-8 on August 6, 1982, whereby he was informed that he had been found guilty as charged. He was assessed a 12-day suspension.

The record shows that the Claimant was specifically charged with alleged failure to test signal aspects on G-246 Signal after making wire changes on June 11, 1982, at approximately 3:00 P.M. This resulted in an improper signal display for Carrier train 510 on July 14, 1982, at approximately 7:10 A.M. The result was a near accident between Carrier trains 510 and 506 at Gloucester Branch.

In discipline cases the Carrier as moving party must make substantial evidence showing that the 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). A review of the record shows that the Carrier has failed to bear its burden of proof. No evidence is presented to show that the alleged incident took place on the date enumerated in the original charge nor on the date for which the Claimant was ultimately assessed discipline. This is no procedural error on the part of the Carrier but a substantive one whereby evidence to support the charge, as levied, is absent. It is not disputed in the record that the Claimant made no wiring changes at the location in question on G-246 Signal on June 11, 1982. The only Carrier witness testifying against the Claimant, who was also the one who charged the Claimant in the first place on July 19, 1982, testified at the hearing that the charge should "be cancelled".

The hearing held on July 28, 1982, then proceeded on the assumption that the events surrounding the alleged charge occurred on June 10, 1982, rather than June 11, 1982. With respect to that date also the Carrier failed to bear the burden of proof. There is no record evidence that the Claimant made the wiring changes on G-246 Signal on June 10, 1982. The changes were apparently made by construction signalmen. Nothing in the record shows that the Claimant was foreman of this gang. His rate of pay was the same as the gang signalmen and it was not disputed that it was, in fact customary for him to "stay away" from the construction gangs while they were doing their work. The Carrier has failed to show that this Signalman, with 35 years of service and a clean record, was guilty of the charge levied.

That the claim be sustained in full. The Claimant shall be compensated by the Carrier for all time lost between August 9 and August 20, 1982. All references to the charge against the Claimant which was filed on July 19, 1982 shall be removed from the Claimant's personnel file.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1984.