

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26717
Docket Number SG-27033

Elmer F. Thias, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Railway System

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway System:

On behalf of Signal Maintainer T. C. Davis for pay for all time lost, March 25 through April 4, 1985 (ten working days), and that his record be cleared of all charges account of being suspended from service. Carrier File SG-614. General Chairman's File: SR-368-1."

OPINION OF BOARD: The Claimant was employed as a Signal Maintainer and had been so employed for a period of thirty-three years.

Under date of January 28, 1985, the Carrier filed charges against the Claimant which read as follows:

- "1. Refusal to respond to an emergency call while on standby duty January 20, 1985.
2. Failure to protect your assignment as signal maintainer, Marshall, North Carolina on Monday, January 21, 1985."

It appears from the record that weather conditions were most severe during the evening and night of January 20, 1985, in the vicinity of Marshall, North Carolina where the Claimant resided. Record cold conditions existed as well as a certain accumulation of snow. Driving conditions were recognized as hazardous. Nevertheless, the Claimant was assigned to stand-by duty on Sunday, January 20, 1985, and he was expected to answer emergency calls for his service on the territory assigned on that date.

At the Investigation of the charges held on February 27, 1985, the Claimant was present and represented by an Organization Representative. The Investigation was conducted in a fair and impartial manner.

At the Investigation the Claimant explained that it was too cold for him to answer an emergency call which had been placed to him at approximately 8:15 P.M. on January 20, 1985. However, the Carrier points out that it was necessary to utilize the services of sixty-three Signal Maintainers during the severe weather on January 19, 20, and 21. After some lengthy questioning and when questioned as to whether he had ever refused to go out on a call before, the Claimant answered as follows:

"I can't recall ever refusing to go. I have took care of all these people at Hot Springs for the last twenty years down there. I figured it was sort of time for them to take of their self a little bit. They are younger than I am."

In view of the foregoing, the Carrier found the Claimant culpable of the first charge.

With respect to Charge #2, the Claimant testified that on the morning of January 21, 1985, he attempted to get to his toolhouse located three miles from his home. However, he slid off the road approximately two-tenths of a mile from his home while he was driving a truck and had to walk back home. He then made three separate telephone calls in an effort to contact his Supervisor in order to notify him that he would be unable to report for work on January 21, 1985. He received no answer to the first call he made and the line was busy at the second call. Consequently, he placed the third call to another Signal Maintainer asking him to relay the message to his Supervisor. The record does indicate the Supervisor received the message.

Nevertheless, the Carrier found the Claimant culpable of the second charge. Upon its findings on the two charges, the Carrier imposed a suspension of ten working days upon the Claimant.

Upon due consideration of all of the evidence in the record, we find the evidence is sufficient to support the charge that the Claimant improperly failed to respond to an emergency call on January 20, 1985, but that the evidence is insufficient to support the charge that he failed to protect his assignment on January 21, 1985. Carrier's position to the contrary has its basis in the premise Claimant was required to contact his Supervisor personally at the latter's home on the morning of January 21st. However, such a requirement is not established by the evidence before us in this dispute.

In view of the foregoing, we reduce the ten working day suspension imposed upon the Claimant to a five working day suspension and direct that the Claimant be paid his actual time lost for such period as exceeds a five working day suspension.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.