

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26718
Docket Number SG-27047

Elmer F. Thias, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

"Claim on behalf of R. G. Eddings for all time lost, all rights and benefits restored and his record cleared, account of Carrier suspended him from service for sixty-days following an investigation concerning an incident which took place on February 5, 1985, at or near Hart, KY. Carrier file: 135-296-18-SPL."

OPINION OF BOARD: The Claimant had been employed by the Carrier for some nine years and, on February 5, 1985, was assigned to the position of Signal Maintainer. On that date, Train ML-4 reported Signal JK 144.8 located at Hart, KY, displayed both a red and yellow aspect. The report was made at 9 P.M. and the Carrier's Signal Supervisor and Field Signal Engineer were informed of the report on the following morning at 7 A.M. Thereupon, the two Officials, accompanied by the General Foreman, went to Signal JK 144.8 to determine the trouble. They also developed information to the effect that the Claimant had been at the location on the preceding afternoon checking light bulbs.

On February 11, 1985, the Claimant was charged with responsibility for the improper signal indication of Signal JK 144.8 on February 5, 1985. A formal Investigation was held on February 19, 1985, at which the Claimant appeared and was represented by two Representatives of the Organization. Testimony was given by the Field Signal Engineer, the Supervisor of Signals, the General Foreman and the Claimant. By letter dated February 27, 1985, the Claimant was notified that he was found to be in violation of Rule 692 and that he was suspended from service for sixty days. The Organization has perfected appeals on the property and to this Board. Hence, the dispute is properly before us.

The Organization claims that the Investigation was not fairly conducted in that the Claimant was not allowed to cross-examine the Carrier's witnesses. However, this is an exaggeration of the record. The Conducting Officer interrogated the first witness and then he asked the Local Chairman if he desired to cross-examine the witness. The Local Chairman declined. Then the Conducting Officer asked the General Chairman if he wished to question the witness. The General Chairman thoroughly cross-examined this first witness. While the General Chairman was in the midst of his cross-examination, the Claimant interjected and sought to ask the witness a single question. His request in this regard was declined by the Conducting Officer.

After the General Chairman had been permitted to complete his cross-examination of the first witness, discussion was had of the Claimant's desire to ask a question of the witness. A short recess was taken to permit the Claimant and his Representatives to confer. When the Investigation was resumed, the second witness was brought in and interrogated. There was no complaint or protest of the manner in which the Investigation had been conducted up to this point. Subsequently, the Claimant indicated that he and the General Chairman saw things differently on one point when he had sought to interrupt the cross-examination of the first witness, but recognized he should have remained silent.

The Organization raises another procedural objection, contending that the Carrier did not render its decision within 10 days after completion of the Investigation as prescribed in Rule 35(a). The record indicated that the Investigation was held and completed on February 19, 1985. The Conducting Officer set forth his decision in a letter dated February 27, 1985, addressed to the Claimant, and that letter was placed in the mail on that date. The Claimant received the Conducting Officer's letter on March 2, 1985. In these circumstances, the Organization claims the decision was not rendered until it was received on March 2 while the Carrier claims the decision was rendered on February 27, 1985, when the Conducting Officer's letter was written and mailed.

The provision in the parties' Agreement which is applicable reads as follows:

"A decision will be rendered within ten days after the completion of the investigation."

The issue here is not new but is one which has been considered and decided by the Board on several occasions. In our Award No. 13219 we said the following:

"The Employes contend, in effect, that Rule 26 requires the Carrier not only to render a decision but to insure its receipt by the employe within the ten-day period. The rule does not make the Carrier an insurer nor can it reasonably be read to mean that a decision is not 'rendered' until it is received. (See Awards 10254, 12001, Fourth Division Awards 1177, 1717; First Division Awards 16366, 16739). This line of authority holds, in effect, that notice of the decision must be dispatched within the time limit in such manner as may reasonably be relied on to actually get the notice to the employe, and that prima facie evidence of compliance with the rule stems from the date the notice is sent, not from the date it is received."

We concur with the line of authority on the issue and we find that the Conducting Officer's decision was rendered within the time limits of the Agreement.

There are substantial differences between the parties over the determination to be made from the evidence developed by the Investigation. In brief, it was the Claimant's testimony that he went to the site of Signal JK 144.8 by motor car, arriving at approximately 1 P.M. on February 5, 1985. He was certain that the signal did not display both a yellow and a red aspect, but his testimony does not specify what aspect was shown. He walked from the motor car to the signal, climbed the ladder to the signal head and tested the bulbs contained therein, using a 6 1/2 inch cadwell rail head bond. The bulbs all lighted and the Claimant descended the ladder and proceeded to the signal case. He opened the case, entered an appropriate entry in the log book contained therein and closed the case. He then went to his motor car and departed for a different location. He was unable to testify that he observed the aspect shown by the signal when he departed.

The Field Signal Engineer, the Supervisor of Signals and the General Foreman inspected Signal JK 144.8 and its site on February 6, 1985. They developed other particulars. Upon appropriate correlation, the testimony of the three Officials discloses they observed the signal was indicating both a red and yellow aspect. They also observed one set of footprints in the snow which led from the rails to the signal, about the immediate vicinity of the signal, and returned to the rails. They inspected both the signal head and the signal case, finding both to be properly locked. When they inspected the circuits within the signal case, they found a #10 pullman jumper applied to terminals for the red and yellow circuits in the signal head. This jumper had been applied with a twist, holding tension on the jumper and terminals. They removed the jumper and it was observed that the signal then displayed a proper red aspect.

The disputed discipline in this case has not been imposed because a jumper was utilized in the signal case of Signal JK 144.8 to check the lights in that signal. That procedure is not recommended but the record indicates that it is a procedure used on occasion. Instead, the complaint is that the jumper was left in place thereby tying together the red and yellow aspects of the signal. Signal JK 144.8 is located at the beginning of a block within Carrier's Automatic Block Signal System. Had a train entered the block on proper authority, the signal should display a red aspect to any following train. With the jumper in place, however, the signal would display a yellow aspect in the event the red bulb burned out. The potential for collision is clear. Consequently, the offense with which the Claimant was charged is quite serious and the proof should be substantial.

The Claimant's testimony at the Investigation is first-hand, clear and direct. He explained the method he used in testing the bulbs and he denied placing the jumper on the terminals in the signal case or that he had observed that jumper in place. The testimony given by the three Carrier witnesses does not constitute direct evidence. Instead, the evidence presented by the Carrier witnesses is all circumstantial. Nevertheless, the circumstantial evidence is neither weak nor inconclusive.

Upon review and due consideration of the entire record, we conclude that the Carrier's finding on the merits of the discipline is amply substantiated and we do not disturb that finding. Likewise, the imposition of the sixty day suspension was justified in consideration of the serious offense.

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

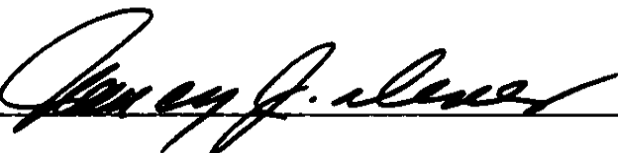
That the Agreement was not violated.

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 23rd day of November 1987.