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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 26844
Docket No. SG-27325
88-3-86-3-762

The Third Division consisted of the regular members and addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri-Kansas-Texas Railroad Co. (MKT):

On behalf of S. C. Anderson for all pay and benefits lost account of Carrier violated the current Agreement, as amended, particularly, Rule 70-D, when it suspended him for 60 days beginning Monday, December 10, 1984, and continuing through Thursday, February 7, 1985. Carrier file 2619"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Two procedural issues must be decided before we address the central question of the Claimant's activities during the evening of November 4, 1984. First, did the Carrier violate the Time Limit Rule when on May 22, 1985, the Carrier postmarked and deposited with the U. S. Postal Service, a denial letter pertaining to the Claimant's claim. The language of Rule is ambiguous and no controlling interpretation has been established by numerous and often conflicting Awards. In the absence of clear or controlling language, the parties are entitled to have this matter decided on its merits.

Second, the record of this case, especially the testimony of the Claimant, indicates that, although the charge notice is not precisely accurate as to location of the rail change out, it is sufficiently precise for the identification of the matter at issue, for the preparation of a defense, and for a fair hearing. Therefore, the charge notice should not prevent a decision in this matter based on its merits.

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There was only one rail change out at issue here, and ultimately the Claimant located it on the night of November 4, 1984. Based upon his own testimony, the Claimant was not properly equipped (for example, his flashlight was not working) to perform his duties, and he did not carry out all the tasks necessary to complete the repair work. The Claimant can be expected to use his knowledge, skill and experience as a Signal Maintainer to investigate, understand and correct the problem. He corrected part of the problem. The Claimant should have been aware that the shunt wires needed to be reconnected. The Claimant was negligent in the performance of his work.

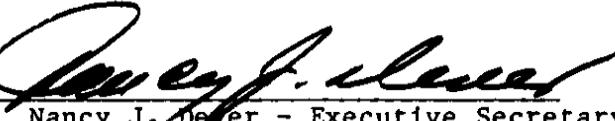
There are no factors in this matter or in the Claimant's past record that serve to mitigate the discipline imposed by the Carrier. Given the seriousness of the situation resulting from the Claimant's negligence, the discipline is not excessive, arbitrary or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deier - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.

LABOR MEMBER DISSENT
TO
AWARD 26844 - DOCKET SG-27325
(Referee Miller)

In reaching its decision in Award 28644, the majority overlooked critical facts found in the investigation transcript. As a result, Award 26844 is grievously flawed.

In its award the majority asserted there was only one rail change out at issue and that Claimant ultimately located it on the date in question. The majority's assertion is incorrect.

The investigation transcript demonstrates two (2) switch locations were involved, the Atkins Team Track switch where M of W forces changed out a rail and the Dr. Pepper Spur switch where Claimant was directed by the same M of W forces to rebond the rail. Claimant testified, without refutation by Carrier, he located a rail at the Dr. Pepper Spur switch requiring replacement of the rail bond on each end and believed he had reported to the location to which he had been called.

Claimant further testified he replaced the rail bonds at the Dr. Pepper Spur Switch location. This fact is corroborated by the switch inspection report placed in evidence at the investigation. The report clearly indicated there were no bonding problems at the Dr. Pepper Spur switch.

The switch inspection report does indicate bonding problems were found at the Atkins Team Track switch where M of W forces had replaced a rail. It is important to note those problems were (1) rail bonds missing; (2) fouling jumpers unconnected. In spite of this lucid fact, the majority in Award 26844 stated Claimant replaced the bond wires but failed to connect the fouling

jumpers and upheld the discipline, obviously ignoring the fact two locations were involved in the incident.

The majority continues by asserting Claimant was negligent in the performance of his work. Again the record demonstrates that despite equipment difficulties, Claimant properly replaced the bonds on the rail he believed had been changed out by the M of W forces at the Dr. Pepper Spur switch, a fact substantiated by the switch inspection report. Claimant did not reconnect shunt wires because there were no shunt wires to be reconnected at the location where he replaced the rail bonds.

Based on the facts found *supra*, it is apparent the majority's oversight has led to an erroneous award. I must therefore dissent to it.



R. R. Boley
Labor Member