

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Delaware and Hudson Railway Co.:

On behalf of S. J. Sorrell for all pay lost account of being suspended 14 days for alleged failure to perform monthly maintenance on his assigned territory, failure to report on Form 1130, failure to report daily activity and failure to properly maintain batteries on his assigned territory. Carrier file: EW 3.84."

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.

On September 27, 1984, Claimant was notified to attend an investigation in connection with the following charges:

- 1) Failure to perform monthly maintenance on batteries on your assigned territory between location 79.1 and CFNHS (approximately MP 121) between February 1984 and September 1984.
- 2) Failure to perform FRA Test 2, 382 and 103 at locations 86 lock, 86 derail, LC cabin, TI cabin, 103.4 lock, 103.4 derail, 103.8 lock and 103.8 derail between June 1984 and September 1984.

3) Failure to report on Form 1130 the automatic highway grade crossing protection performance at Ferry Road and LCM crossings in Port Henry, Burdicks, Gunnisons, Furnace Road and New Mill crossings in Crown Point, Pells, Ft. Marchalls and Wrights crossings in Fort Ticonderoga between July 1984 and September 1984.

4) Failure to report on Form 1129 daily activity and overtime between the dates of August 22, 1984, and September 21, 1984.

5) Failure to perform proper maintenance on assigned territory between locations 79.1 and 121.1 resulting in deteriorated condition of signal apparatus."

The hearing was held on October 19, 1984. As a result, Claimant was found guilty of charges 1, 3, 4 and 5 and was assessed a 14-day suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging the suspension.

In reviewing the procedural dispute between the parties, it is apparent to this Board that the parties have generated conflicting views as to the proper procedures to process a discipline appeal (Rule 71) as opposed to the appeal of a time claim (Rule 75). In view of this conflict and the facts and circumstances of this case, we shall decide it on its merits. However, this Board suggests that the parties confer and restate their agreed-upon appeal process for both discipline cases and time claim cases in one letter so that both parties are well advised as to what is necessary to properly effectuate an appeal in the future.

With respect to the merits of the case, this Board finds that there is not sufficient evidence in the record to support the finding that the Claimant was guilty of failure to properly perform his duties. In addition, the on-the-property handling of this case reveals that Carrier violated Rule 72 when it failed to provide the Organization, as well as this Board, a complete copy of the trial record. The Carrier did not refute the Organization's contention that "...none of the exhibits that were entered into the trial record were included in the transcript." No exhibits were attached to the copy of the transcript furnished to the Board.

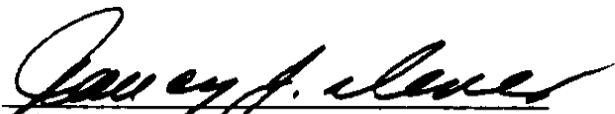
In view of the clear violation of the Agreement, we have no recourse but to uphold the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

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