

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad Company (BN):

On behalf of CTC Signal Maintainer R. C. Kramer, headquartered at Prairie du Chien, Wisconsin for payment of 30 days' wages including all overtime paid by the Carrier on his territory between November 21 and December 20, 1985, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 54, when it suspended him for 30 days without a proper notice, hearing or cause." General Chairman File C-86-414. Carrier File GSI-86-4-10.GC

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 employees 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 August 15, 1985, the conductor of Train 241 reported a false clear proceed from Signal N 242.9 in Crawford County, Wisconsin. CTC Signalman R. C. Kramer (Claimant) was assigned to the area in which the malfunction had occurred and he had been the last person to work on that signal on August 13, 1985. Around noon on August 15, 1985 Claimant responded to the Conductor's report and, assisted by Signal Maintainer Spalla, unlocked and removed the signal case covering and discovered that the cause of the problem was that Relay 5-7 at Signal 242.9 was tipped over. Claimant and Spalla replaced the relay to its proper position and reported the occurrence to Carrier and to the Crawford County Sheriff's office. No signs of vandalism or forced entry into the signal case were evident.

As part of an attempt to discover who was responsible for the tipped relay, Carrier Special Agent Kline questioned Claimant and Spalla on the morning of August 16. In response to Kline's questions, both individuals responded that there would be no reason for the relay to be tipped, and that no workmen had been present in the area on the morning of August 15.

On August 26, Kline, continuing his investigation, asked Claimant if there was any cause to tip the relay while he was checking the batteries at 242.9 on August 13. Claimant replied that there was none. Claimant also stated that if the relay had been tipped he would have noticed when he checked the batteries.

On October 1, Special Agent Just questioned seven Signalmen that were working in the area of Signal 242.9 at the time the false clear signal was reported. Of each of the men questioned, only Claimant stated that he had been in the signal box that contained Relay 5-7. He further claimed that he had been in the box only to check the batteries and that no other work had been done. Carrier records revealed that Claimant was the last employee on record as being in the signal box at 242.9 before the reported false proceed at that signal.

Also on October 1, all seven Signalmen agreed to participate in a polygraph test as part of the criminal investigation conducted by local law enforcement officials of the tipped relay. The test was scheduled for October 10. Such action was found to be proper (829F2d. 617 (7th Cir., 1987)).

In a pre-test interview with the polygraph examiner on October 10, Claimant admitted that he had tipped the relay at 242.9. The examiner reported this to Special Agents Kline and Just. The Special Agents, along with Signal Supervisor Baker, then proceeded to question Claimant. At this time Claimant stated that he had in fact tipped Relay 5-7 at Signal 242.9 on August 13 while trying to clear the stuck yellow at 241.1, and that he could have forgotten to restore the relay to its proper position but that he could not remember if he had done so.

Claimant was cited by notice dated October 14, 1985 to attend an Investigation on October 23, 1985 "for the purpose of ascertaining the facts and determining your alleged responsibility in connection with false proceed signal reported by conductor of train number 241 at signal N242.9 at 11:56 a.m., August 15, 1985...."

The Investigation was held as scheduled and Claimant at that point denied having truthfully admitted to tipping the relay. Carrier declined to believe his retraction of his earlier admission and found that he acted in violation of Rules 625 and 507 of the Maintenance of Way Rules by tipping Relay 5-7 at Mile Post 242.9 on August 13, 1985. Claimant was notified of the finding and assessed a 30-day discipline by letter dated November 19, 1985.

A number of procedural objections were raised by the Organization in handling on the property. With respect to the Organization's objections, this Board finds no violation of the provisions of Rule 54 when the Carrier undertook the interviews of October 10, 1985 at the Crawford County Sheriff's Office without notifying the Organization. Seven signal employees, including Claimant, were interviewed by Carrier on October 10 in an effort to ascertain the facts surrounding an incident that threatened the safe and efficient operation of the railroad. No discipline was assessed based on these interviews. As previously decided on this property, this type of non-accusatory investigation falls under the supervisory prerogatives of the Carrier and is not subject to the notification provisions of Rule 54 which apply to an investigation of an employee from which discipline is assessed. Rule 54 does not require Carrier to notify the Organization of its efforts to elicit facts necessary to maintain the safe operations of a railroad. See PLB 3684, Award 6 and PLB 2746, Award 17.

The Organization further objects to the October 10 Investigation on the basis that Claimant was not afforded representation. This issue has also been previously settled on the property. See PLB 2746, Award 17. As in the case cited, the present case contains no evidence that the Carrier denied an employee request for representation. Instead, the record is clear that no such request was made. The seven employees questioned were notified of the Investigation ten days prior to the event and were thus given ample time to request representation. The fact that none of them chose to do so, nullifies the Organization's claim of a breach of Rule 54 in this regard.

The Organization claims that the formal Investigation of October 23 violated the time limits set out in Rule 54 because it was held in excess of fifteen days from the date of the reported false clear signal on August 15. The language of Rule 54A is unambiguous where it provides "... that personal conduct case will be subject to the fifteen (15) calendar day limit from the date the information is obtained by an officer of the Carrier ...". The relevant information in this case is the knowledge of Claimant's involvement in the false clear signal of August 15, not the occurrence of the false clear signal itself. Information pertaining to Claimant's involvement, however, was kept from Carrier until October 10. October 10, therefore, is the date from which the fifteen day limit should be counted, not August 15 as the Organization claims.

Turning to the merits, we have no doubt that the Carrier persuasively showed that Claimant admitted to tipping Relay 5-7 at Signal 242.9 on August 13. Testimony by three witnesses at the October 23 Investigation corroborates the fact that on October 10 Claimant admitted to tipping the relay.

A substantial preponderance of record evidence shows: (1) Claimant had worked at the Signal Box 242.9 on August 13, (2) he was the last employee before the reported false clear to do so, and (3) there was no evidence of forced entry or vandalism in the area. This evidence, standing alone offers substantial support for Carrier's finding of a Rule violation by Claimant. When taken in conjunction with Claimant's October 10 admission of responsibility for tipping the relay, a totality of record is established which justifies Carrier's decision not to credit Claimant's subsequent denials of responsibility at the Investigation of October 23.

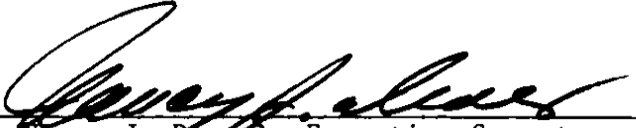
For all these reasons, there is nothing in the record which would lead this Board to conclude that Carrier's findings were arbitrary or unreasonable or unsupported by substantial evidence. The quantum of discipline (thirty days suspension without pay) is not excessive.

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 11th day of January 1990.