

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig 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 Railway Company (MKT):

Claim on behalf of T. A. Miller for payment of 45 days' pay at his pro rata rate of pay, and on behalf of B. A. Walker for payment of 10 days' pay at his pro-rata rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Article VII-DISCIPLINE AND GRIEVANCES, when it failed to prove claimants' guilt and assessed them with excessive discipline, following an investigation on April 27, 1987. 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.

The significant events leading to this Claim arose on April 27, 1987, when Signal Foreman T. D. Miller and Signalman B. A. Walker moved a backhoe, operated by Walker, over a different route than he had been directed to follow by the Assistant Signal Supervisor. The evidence shows that the backhoe had been driven to the designated work site down rail tracks and over a bridge, as instructed by the Assistant Signal Supervisor. However, when the backhoe was returned, Miller instructed Walker to drive the backhoe across a creek where it became stuck. Its removal caused the loss of considerable time and was an expense to the Carrier.

The Board has carefully reviewed the record and concludes that the general issue here is whether, under the facts of record and pursuant to principles long applied in this industry in discipline cases, the Carrier had proper cause for assessing the discipline dispensed or whether some lesser penalty would have been more appropriate.

The evidence shows that Miller received and understood instructions to the effect that the backhoe should be moved to and from the work site straddling the tracks across the bridge. While it appears that he had reasonable safety and other concerns after he had observed the backhoe crossing the bridge to the work site, he erred in unilaterally deciding to remove the backhoe by crossing the creek. Rule B is specific that employees consult their supervisor if they have doubt about the instructions they have received. Because Miller did not contact his supervisor before he instructed Walker to drive the backhoe across the creek, he was in violation of the Rule. However, the Carrier's conclusion that he was also insubordinate, unreasonably stretches the meaning of insubordination. This was not a deliberate defiance of authority or opposition to an order of a supervisor. Clearly, he may have been remiss in not calling his supervisor, an independent judgment on his part that cannot be said to be good.

With respect to Walker, the backhoe became stuck because Miller instructed Walker to take it across the creek and Walker simply complied with the order. Under the circumstances that we find in the record, it was not reasonable for the Carrier to conclude that Walker should have objected to the order that he received from Miller.

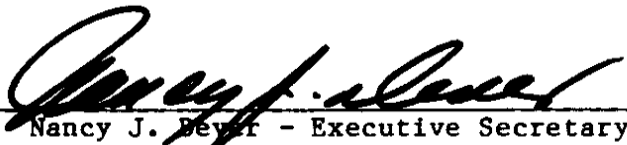
In view of all of the foregoing, we find the discipline assessed was excessive and arbitrary. Accordingly, Miller's discipline is reduced to a 5 day suspension and Walker's Claim is sustained.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1990.