

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the SOO Line Railroad Company (SOO):

Claim on behalf of D. J. Mandeik and J. W. Christoph, for payment of all time and benefits lost when the Carrier violated the current Signalmen's Agreement, as amended, particularly, the Discipline Rule." Carrier file 900-16-A-63.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

This case involves two career Signal Department employees, who became involved in a situation which resulted in their being suspended from service without pay for six calendar months extending from February 22, 1988, to August 22, 1988.

The basic facts of record are clear and uncontroverted. Each Claimant had more than thirty years of unblemished signal department seniority on the former Soo Line property. When Soo Line and former Milwaukee Road territories were merged and the employees' seniority was combined, the Claimants were required, in an exercise of their combined seniority, to displace onto Signal Testman positions on the former Milwaukee territory. Their displacement notices were dated October 9, 1987 (Christoph) and October 12, 1987 (Mandeik). Each Claimant, at the time of the displacement, requested instructions, literature, assistance and training relating to the positions on which they had exercised their seniority.

The record is clear that Claimants were not fully qualified for the Testman positions in question. They were being tutored by another Testman and by the Signal Foreman. During the training period immediately following their displacement on the Testman positions, the Signal Foreman described their work habits as "Excellent and reliable."

On February 22, 1988, the two Claimants were working together and without any overseer or tutor. The Signal Foreman was on vacation and in his absence he had instructed the Claimants to continue to do test work "in areas that they felt they were familiar." During the tour of duty on February 22, 1988, Claimants were in the act of testing circuits at Portage, Wisconsin, when they mistakenly threw a switch under a train which was moving through the plant causing a derailment with resulting damages of approximately \$160,000.00.

At the Hearing held on March 2, 1988, the Claimants were present and ably represented. During their testimony, each Claimant acknowledged that they clearly understood the Foreman's instructions to only test "whatever we thought we were safe in doing" (Christoph) and "I was told to do what I thought I could do comfortably" (Mandeik). They both acknowledged during their testimony that their actions of testing relays while a train was moving through the plant was the primary cause for the derailment. They also acknowledged that they were not fully familiar with the types of equipment with which they were working at the time of the derailment.

The Organization argues that Carrier must accept most of the responsibility in this situation inasmuch as they knew that the Claimants had not been adequately trained and, in fact, had taken initiatives AFTER the derailment to acknowledge that "we need additional training," and to provide such additional training to the Claimants. The Organization further contends that, in view of Claimants' clear record for more than thirty years, a six month suspension is excessive discipline.

Carrier argues that because of the more than thirty years of service of the Claimants and because of the instructions which had been issued by the Foreman, these experienced signal employees should not have attempted such a test as they did when they were not fully familiar with the circuitry and especially with a train moving through the plant. Carrier continues that they did, in fact, consider the Claimants' otherwise good record when they determined the degree of discipline which they assessed in this case.

The responsibility of the Board in reviewing discipline cases has been clearly set forth by a long line of arbitral decisions. We do not substitute our judgment for that of the Carrier in determining the degree of discipline for a proven violation unless we are convinced that the fact situation in a particular case clearly indicates that the degree of discipline is so excessive as to constitute an abuse of the Carrier's inherent right to assess discipline. In this case, we are convinced that a six calendar month suspension is excessive. To be sure, the Claimants should have known what they were doing before taking the action which they took. If they did not know what they were doing or if, as testified, they were not comfortable with the actions being taken, they should have either sought assistance or stopped the testing, especially since, from the record, we are not convinced that they had the Operator's clearance to make such tests.

However, the Carrier must share in the responsibility because they permitted these less than fully trained employees to be in the position they were in on the date in question. Carrier's representative acknowledged that "... it takes many years to become a testman" Carrier's culpability cannot be denied or overlooked. Therefore, it is our determination, based upon the fact situation which exists in this case record, that a thirty working day suspension would have been adequate to impress upon these longtime employees that they must be sure of the consequences of their actions before they act.

The discipline as assessed is to be reduced from six calendar months to thirty working days. Any other earnings or compensation which Claimants received during the original out-of-service period must be considered to offset whatever compensation is due under this Award.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1991.