

The Thid Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Norfolk and Western Railway Company (N&W)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company (N&W) Railroad:

Claim on behalf of P.D. Smelser, for rescission of thirty (30) days suspension, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 701 and 704, when it disciplined him for incident on October 20, 1989, and assessed him with excessive discipline." Carrier file SG-ROAN-89-12. BRS Case No. 8128-N&W.

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 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.

At the time of the incident in question, Claimant was employed by Carrier as a Signalman assigned to Signal Gang No. 3. On October 9, 1989, the Claimant was regularly assigned as a signalman, first shift, making wire changes in the house case at No. 27 switch in the vicinity of Canal Drive, Chesapeake, Virginia. While working at that location, at approximately Noon, he inadvertently dropped a relay terminal nut, while making wire changes. The nut fell between the No. 1 Heel (binding post) and the No. 2 Heel (binding post) on the 27RWS, burning the No. 2 Heel. That caused a false battery to be applied to the 27 switch controller, driving it partly into reverse and setting the Bridge signal at the red or stop position.

At approximately the same time, Train No. 821V1 was about 3100 feet from the bridge signal. The engineer operating Train No. 821V1 told the operator that the bridge signal was red or at stop. The train failed to stop, ran through the No. 27 switch and derailed.

By letter of October 12, 1989, Carrier notified Claimant to report for a formal Hearing to determine his responsibility, if any, in connection with the derailment of Train No. 821V1. Following postponement the Hearing was held on Friday, November 3, 1989. As a result of the Investigation, Carrier assessed Claimant with a thirty day actual suspension, beginning November 17, 1989 and ending December 16, 1989. The Organization appealed the assessed discipline on January 12, 1990. That appeal was denied on March 1, 1990, and was subsequently processed up to and including the highest Carrier officer designated to handle such matters.

It is the position of the Carrier that in view of Claimant's negligent behavior and the resulting derailment, a thirty day suspension was entirely appropriate. It notes that the Claimant admitted at the Hearing that he had dropped the relay nut. His dereliction of duty directly resulted in the signal blacking out and the switch to throw, derailing three units of Train 821V1 on October 9, 1989. Carrier points out that there are immense dangers involved in train operations, and the possible adverse consequences of false proceed signal indications are considerable. Such an occurrence can endanger the lives of train crewmen as well as the general public. Moreover, Carrier insists that failure of the train to stop within the allotted distance, thereby avoiding derailment, is not the fault of the train crew, but the fault of the individual whose action precipitated the accident in the first place. Accordingly, it maintains that the instant Claim should be denied.

For its part, the Organization does not dispute that the Claimant shares some culpability for the derailment of three units of Train 821V1 on October 9. It does dispute the extent of Claimant's culpability. The Organization maintains that the Engineer of Train 821V1 failed to heed warnings from the control operator to apply the brakes and try to stop the train. It also notes that at the Investigation Carrier's witnesses testified that the circuitry used on the section of rail the Claimant dropped the nut into was outdated equipment which was replaced by more up to date circuitry the day following the derailment. In light of these mitigating circumstances, the Organization urges that the Claim be sustained and that Claimant be made whole for time lost due to the thirty-day suspension.

The Claimant has admitted dropping the nut that triggered the malfunctioning of the signal and switch on October 9, 1989. Accordingly, there is no question that Claimant has some culpability concerning the resulting derailment of Train 821V1. There is some support, however, for the Organization's position that there are contributory mitigating circumstances in this case.

Testimony on the record before the Board regarding the ability of the Engineer to bring the train in question to a stop prior to the derailment is inconclusive, at best. Thus, it is not possible to determine on the facts presented whether or not, as the Organization alleges, the derailment could have been avoided but for the Engineer's failure to stop the train on signal.

Testimony on the record does establish, however, that had Carrier changed the switch at issue to the more modern circuitry before the derailment, Claimant's action might have had no effect upon Train 821V1. Had Claimant dropped the nut a day or two later than he did, his action would have been unremarked.

It has been clearly established that Claimant's action precipitated the derailment. Had he not dropped the nut, the derailment would not have occurred. By coincidence of Carrier's late scheduling of the switch circuitry, Claimant's apparently minor misdeed resulted in an expensive and potentially dangerous accident. The Board will follow the Findings in Third Division Award 23472:

"While the Board in no way finds that Claimant was without fault in this incident,...the Board finds that there were mitigating and extenuating circumstances surrounding the incident in question which calls for modification of the discipline imposed."

It is a well established tradition on this and other Boards that the Board is reluctant to substitute its judgment for that of Carrier with respect to quantum of discipline. In the instant case, however, there is sufficient evidence of mitigating circumstances to warrant reduction by the Board of the penalty assessed. Accordingly, Carrier's discipline shall be reduced to fifteen days actual suspension, and Claimant shall be made whole for the time lost due to the remaining fifteen days' suspension Claimant served.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.