

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31115
Docket No. SG-31527
95-3-93-3-543

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago & North Western Transportation
(Company

STATEMENT OF CLAIM: "Claim on behalf of General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company (CNW):

"Claim on behalf of J. B. Bunger for reinstatement to service with payment for all lost time and benefits and with seniority unimpaired and the record of discipline removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 51, when it failed to provide the Claimant with a fair and impartial hearing on charges of safety violations and then imposed the harsh and excessive discipline of dismissal from service. Carrier's File No. 79-92-53. General Chairman's File No. S-AV-82, BRS File Case No. 9081-CNW."

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 employee 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 Claimant was assigned to the position of Signaller on the Beverly Signal Crew at Cedar Rapids, Iowa, which was engaged in a joint Signal-Communication camera installation project along Carrier's right of way. During the installation, the crews were

burying pipe across two of the Carrier's Main Line Tracks at MP 86.4, as a result both tracks were fouled with equipment. At one point, however, it became necessary to request an extension of track time on the two tracks. The Claimant radioed the dispatcher to arrange an extension, but, only obtained the extension on track 2. Subsequently, a train was cleared to run on track 1 and collided with the trencher which the Claimant had parked between Tracks 1 and 2. Since the Claimant had allegedly failed to get track time on both tracks, he was charged with, "failure to properly protect (himself) and (his) work equipment on Wednesday, May 20, 1992 which resulted in a collision between Train PRNPA and a Ditch Witch trencher at approximately 1040 hours." Because the damage was in excess of \$500.00, he was also required to submit to a drug test. His test was positive and he was charged with a Rule G violation which was the subject of a separate claim before this Board, as was a third claim filed relative to a third alleged rule violation.

A Hearing on the instant charges was held on May 27, 1992. Following a review of the evidence produced at the Hearing, the Carrier determined that the Claimant was guilty of the charges and dismissed him from service.

The Organization appealed the Carrier's decision claiming the Claimant had been dismissed without just cause. They argue that the Claimant was not afforded a fair and impartial hearing on the charges. In addition, they urge that the Carrier never established that adequate instructions and/or training for newly implemented track and time permits was the reason for the collision. They further held that a review of the transcript, the Claimant's 18 years of service and the Carrier's policy of progressive discipline, the penalty issued was extremely harsh.

The Organization also points out that the Claimant had never used track and time permits before and in this case merely responded to a radio call to extend a permit that had been requested earlier by the Crew's Lead Signalman. In addition, the Brotherhood argued, the Carrier had never provided formal training on the correct use of track and time permits.

The Carrier contends that the evidence produced at Hearing clearly demonstrated the Claimant was responsible for "failure to properly protect yourself and your work equipment on Wednesday, May 20, 1992 which resulted in a collision between Train PRNPA and a Ditch Witch Trencher at approximately 1040 hours". As proven at Hearing, the Claimant's actions were a violation of Operating Rule 252 and Timetable No. 12 on the East Iowa Subdivision. The Claimant has been a Signalman for 18 years and knew that a track

permit is required for any tracks which are fouled and where work is being performed. Claimant accepted responsibility for obtaining the necessary permits, thus was responsible for protecting his equipment and the entire crew.

The Carrier cited it's Discipline Policy which provides for dismissal in cases of ". . .grossly negligent conduct, or dangerous conduct on duty. . .". They contended that the Claimant's failure to secure the proper permits, which jeopardized the safety of the entire crew and others, constituted both grossly negligent and dangerous conduct. The Carrier believes his termination was appropriate.

If this were the only rule infraction for which the Claimant was responsible, the Board may have been inclined to treat his tenure as mitigating. However, his negligence in securing the proper permits, coupled with his Rule G violation supports the actions taken by the Carrier. The termination was appropriate.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.