

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23527
Docket Number SG-23918

Paul C. Carter, Referee

PARTIES TO DISPUTE: {
 { Brotherhood of Railroad Signalmen
 { Norfolk and Western Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk & Western Railway Company:

On behalf of Mr. D. J. Hatfield, who was dismissed for alleged improper performance of duties during the week of January 29, 1979, at Dunkirk, NY, that he be reinstated to the position of Signal Maintainer, Dunkirk, NY, that he be paid for all time lost account of being dismissed, and that he be afforded all other rights and benefits provided for in agreements between the company and the union."

OPINION OF BOARD: On February 9, 1979, claimant, a signal maintainer for the Carrier, was issued the following notice:

"You are hereby notified to report to the Conference Room, Second Floor, Old Administration Building, foot of Wood Street, Bellevue, Ohio at 9:30 AM, February 20, 1979 for a formal investigation in connection with your improper performance of duties at Dunkirk, N.Y. during the week of January 29, 1979 when you failed to provide switch point protection on two (2) hand operated main track switches, and also failed to provide shunt fouling protection on one (1) hand operated switch as required by Norfolk and Western Railway Signal and Communication Rules in signal territory. First awareness of this condition by Norfolk and Western Signal Supervisory personnel was on Tuesday, February 6, 1979.

If you desire a representative or representatives and/or witnesses present at this formal investigation please arrange for their presence."

The investigation was postponed and commenced on April 2, 1979. However, it was recessed at the request of the General Chairman and concluded on April 26, 1979. A copy of the transcript of the rather lengthy investigation has been made a part of the record. We find that none of claimant's substantive procedural rights was violated. The investigation was conducted in a fair and impartial manner. On May 15, 1979, claimant was notified of his dismissal from the service.

Without attempting to detail the evidence adduced at the investigation, suffice it to say that in the opinion of the Board there was substantial evidence to support the charge. The condition in which the claimant left the switches involved created a dangerous situation, and was in violation of the rules of Carrier. Severe discipline was warranted; however, the time that claimant has been out of service should constitute sufficient discipline.

We will award that claimant be restored to service with seniority unimpaired, but without any compensation for time lost while out of the service. The claimant should understand, however, that the purpose of this Award is to give him one last chance to become a reliable and dependable employe of the Carrier, and that any further major infractions on his part, will result in the permanent termination of his services.

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

That the parties waived oral hearing;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pugh

Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1932.