

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29608
Docket No. CL-29987
93-3-91-3-521

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

(Transportation-Communications
(International Union
PARTIES TO DISPUTE: (
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10625) that:

1. Carrier violated the effective Telegraphers' Agreement when, following an investigation on October 25, 1990, it imposed discipline of sixty (60) demerits against the record of Tower Operator R. W. Houston;
2. Carrier shall now rescind the discipline imposed and shall clear Claimant's record of the charges placed against him."

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 employe 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.

On September 27, 1990, Claimant, seniority date March 15, 1990, was working the 4:00 P.M. to 12:00 midnight shift as Tower Operator at the Griffith Tower. The tower, located on Broad Street in Griffith, Indiana, is a main thoroughfare for both vehicular and railroad traffic with six sets of railroad tracks. At this particular crossing, the Tower Operator manually activates the crossing gates by "throwing" a lever approximately two inches long.

Thus, the gates are physically triggered by the Operator. In addition, in the event of a wiring or circuit failure, the gates are designed to activate automatically.

At approximately 7:20 P.M. on September 27, 1990, a west bound Grand Trunk Western Train consisting of no fewer than 25 cars traveled through the Broad Street crossing at approximately 25 miles per hour. Although the sound of the approaching train was heard, the gates were never activated. After the train cleared the crossing, the gates still had not been lowered, however, according to an eyewitness, a Town of Griffith Council Member, the gates then came down for approximately two minutes, and were subsequently raised.

The Council Member concerned about the potential gravity of the situation, addressed a letter to the E J & E Signal Department which read in pertinent part as follows:

"At 7:20 P.M. to 7:30 P.M. Thursday, September 27, 1990, complainant was traveling south on Broad Street. At Main and Broad Street, the sound of an approaching train could be heard. Nearing the automated safety gates on the South Broad Street crossing, two (2) vehicles were stopped. The gates were NOT down. An East bound Grand Trunk continued to sound its warning - without stopping.

After the train cleared the crossing, (two) 2 (sic) North Bound and (two) 2 South Bound vehicles and a bicycle crossed, which took over one minute. The gates then came down for (two) 2 minutes. No trains were seen. Gates were then raised.

After the train cleared the crossing, the gates still had not been lowered. The approximate speed - 25 miles per hr.; approximate number of cars - not less than 25.

Complainant noticed there was more lighting inside the tower than normal...."

By letter dated October 4, 1990, Claimant was notified that an Investigation was to be convened:

"...to develop all facts and to determine your responsibility, if any, in connection with the alleged incident as contained in the attached letter from Merle D. Colby, First Ward Member of the Town of Griffith, Indiana's Board of Trustees, copy enclosed. This alleged incident occurring during your 4:00 P.M. Operator's Assignment at Griffith, Indiana of Sept. 27, 1990."

Following the Investigation, the Claimant was assessed 60 demerits for being in violation of Rule 700, Rules of the Operating Department, which states in pertinent part:

"Employees...who are negligent in the performance of their duties...will not be retained in the service."

The Organization maintains that the Claimant was a relatively new employee who was not regularly assigned to the position, and although the Claimant readily admitted his failure to activate the switch, the Organization asserts that the following portion of the Claimant's testimony serves as an explanation of the incident.

"RI: Mr. Houston, did you think you had pulled the lever and put the gates down at the time the train was coming?

RWH: Yes.

RI: Did you have any interruptions during this period?

RWH: Yes.

RI: And what interruptions were there?

RWH: I had an east bound EJ&E train sitting up there on the siding and I thought--I thought I had knocked the signal down. So, I walked over to throw my signal in because once the train goes through you have to throw the signal in order to clear. I did all that and I--the train was called. Also someone from the Police Department called and asked me if there was anything wrong with the gates and I told them, no. There wasn't anything wrong with the gates. Well, the gates didn't go down. Well, I let the gates down when I walked over to see it and look at the gates. I noticed that they weren't down so it wasn't anything wrong with the operation of the gates. The gates worked fine before the incident and they worked good after this. I just made a mistake. I just--actually I thought the gates were down. I wanted to hit the lever, but I hit, I missed."

The Organization further argues that even if the Claimant was culpable of the infraction, the discipline imposed is "excessive and an abuse of discretion," in view of the fact that the incident did not result in injuries or any liability to the Carrier.

For its part, the Carrier maintains that the Claimant "was properly charged, given his contractual due process rights through a fair and impartial investigation, wherein his culpability as charged was clearly established, and the discipline assessed was not excessive," in light of the potential consequences of the Claimant's failure to properly activate the switch.

A review of the evidence presented to this Board indicates the following: The gates at Griffith Tower were placed there for the protection of the general public, and proper operation of these devices does not appear to be difficult. Further, Operators assigned to perform service at the Griffith Interlocking Tower receive an increased rate of pay solely to insure the safe operation of these protection devices.

While it is commendable that Claimant was forthcoming with an admission of guilt concerning this incident, his admission does not diminish the potential consequences of his negligence. The Organization's statement that there was "no near accident" and the "Carrier incurred no liability" is moot when one considers what could have occurred.

Although the penalty assessed by Carrier may seem harsh under the circumstances, it has long been a policy of this Board to refrain from substituting our judgment for Carrier's unless we find the discipline assessed to be excessive and unreasonable or arbitrary. In light of the gravity of potential liability to the Carrier we see no reason to disturb Carrier's determination of discipline in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.