Award No. 4348

Docket No. 4203

2-DT&I-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: A) That the suspension given F. L. Kittle, Carman, was in violation of Rule 28 of the Controlling Agreement.

B) That accordingly the Carrier be ordered to compensate the aforesaid Carman ten, (10) days pay at straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: F. L. Kittle hereafter referred to as the claimant is employed by the Detroit, Toledo and Ironton Railroad Company hereafter referred to as the carrier.

The claimant, who held a vacation relief assignments, at Flat Rock, Michigan, was advised on October 7, 1960, by Mr. G. H. Bunte, General Car Foreman that he was to be disciplined by a suspension from service for a period of ten (10) working days starting Tuesday, October 25, 1960.

On October 17, 1960, on behalf of the claimant, the local Protective Board, Chairman J. C. Ward, addressed a letter to General Car Foreman Bunte requesting a hearing in accordance with the provisions of Rule 28 of the Current Agreement.

This dispute has been handled with all carrier officers designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make a satisfactory adjustment.

The Agreement effective November 16, 1947 is controlling.

POSITION OF EMPLOYES: It is submitted to be the employes' understanding of the Aforementioned Agreement that the claimant be given a hearing if requested in ten days and discipline or discharge be suspended until a final decision is made, effective October 7, 1960 with the intent and purpose of Rule 28 of the Current Agreement.

Rule 28 reads in part:

"(a) Employes who have been in the service more than sixty

ever term it is called—whether "investigation" or "hearing." He was also given the required notice of such proceeding and the discipline. However, by what term it is described, Kittle and his three representatives still had the opportunity to hear the evidence against him and to present his own case. He was not denied any rights.

On this railroad, as well as many others, it is considered that "investigation" and "hearing" are synonymous. This seems to be quite prevalent on a great many railroads. In First Division Award 13354 it is stated—" * * * upon railroads the term 'investigation' seems to be used interchangeably with the term 'hearing.' "

Therefore it appears that the rule was complied with. The claimant was given a fair impartial hearing and was found guilty of violation of Rule 16, and received the full protection of Rule 28. In view of such facts, there is no basis for sustaining the claim and the carrier requests that the Board so find.

FINDINGS: The Second 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 23, 1960, the Claimant was personally given a notice to appear at the General Car Foreman's office on October 5 for "an investigation" relative to his repeated violation of Rule 16. This Rule provides:

> "Employes shall not remain away from service except in cases of sickness or other unavoidable causes, in which event they shall notify their foreman as soon as possible. Repeated violations of this Rule will be subject to discipline."

The Claimant did appear on October 5, as directed, and was represented by the Chairman and two members of the Local Protective Board. At the investigation the Carrier produced a list of 19 days on which the Claimant was alleged to have been absent without reporting. The Claimant testified that he reported in or gave justifiable reasons for his absence on some of these dates, but stated that he did not remember reporting in on four separate days. At the conclusion of the investigation the Claimant stated on the record that it had been fair and impartial. Subsequently, on October 7, the Claimant was suspended without pay for 10 days, effective October 25.

It appears to be the contention of the Organization that Rule 28 was violated because the Carrier refused to grant the Claimant a hearing in response to the Local Chairman's request therefore, made by his letter dated October 17. Apparently, the Organization is taking the position that the inquiry held on October 5 was not a "hearing" because the Carrier denominated it an "investigation," and that it was held without a request therefor having been made by the Claimant. In the context here used the words "investigation" and "hearing" are synonymous. See First Division Award No. 13354. And, manifestly, the Claimant cannot complain that he was denied a hear-

ing when one was held, when he was personally present, when he was represented, and when he stated at the conclusion thereof that it had been fairly and impartially conducted.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1963.