

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, the Burlington Northern Inc., arbitrarily disciplined Shop Electrician R. Minefee, after denying him a fair and impartial investigation, by entering a mark of censure on his personal record.
2. That in violation of the current Agreement, the Burlington Northern Inc. failed to provide a copy of the transcript of investigation to the duly authorized Local Representative.
3. That accordingly, the Burlington Northern Inc. be ordered to remove the entry of investigation and/or censure from the personal record of Electrician Minefee.

Claim to start on November 20, 1979.

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.

The Claimant is a shop electrician at the Carrier's Diesel Facility in Clyde, Illinois. By letter of October 12, 1979, Claimant was notified of an investigation scheduled for October 24, 1979, for the purpose of:

"Ascertaining the facts and determining your responsibility in connection with your alleged failure to be alert and attentive and your alleged failure to comply with instructions from your supervisor on October 2, 1979, while employed as Electrician, Clyde Roundhouse, Cicero, Illinois."

At the hearing, Claimant was asked by the Hearing Officer if he received notice in proper form to attend the investigation. His representative objected to the notice noting Claimant had several assignments on October 2, 1979, and without knowledge of the specific violation, Claimant nor his representative could

properly prepare for the investigation. The Hearing Officer offered a postponement which was rejected unless the notice of investigation was revised. Claimant averred he did not know nor did he understand the offense with which he was being charged. The investigation continued, and the direct testimony of the Locomotive Foreman was entered into the record.

The Organization argues that the Carrier violated two critical procedural steps which prejudiced the rights of Claimant. It contends the notice and charge were **not** precise and did not sufficiently advise Claimant of the conduct which the Carrier proposed to investigate. Secondly, the Organization avers neither Claimant nor his representative received a copy of the transcript within thirty (30) days of the investigation.

The Carrier asserts the notice was adequate to apprise Claimant of the charges against him and to allow him the opportunity to prepare his defense.

Having reviewed numerous prior awards, the Board is convinced the initial notice was too vague. The rule requiring sufficiency of charge takes into account a number of considerations. In this case, the request for a continuance could serve to cure the defect claimed. Carrier argues that following the Foreman's testimony, the postponement served as an advantage to Claimant. This Board is not convinced. The basis of the Carrier's charge involves two locomotives and requires accountability for a substantial number of Claimant's normal hours of work. The testimony of the Foreman related entirely to Engine 6153. The testimony elicited by the Hearing Officer concerning Engine 6153 was general and to a degree that no common understanding could be reached so as to alert a reasonable person of the accused misconduct. The citing of Engine 6153 and the subsequent development of the Carrier case at the second investigation six days later persuades this Board that Claimant cannot be held to have known or ought to have known the nature of the offense with which he was charged. The interdependency of the work performed on Engines 6153 and 3038 and the status of specific, maintenance work required more detail than the initial notice and the Foreman's general testimony provided. The purpose of the "precise charge" requirement is to give Claimant unambiguous advance notice of his charged offenses in order for Claimant to prepare his defense.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of July, 1982.