

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
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(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it improperly assessed Machinist Helper D. E. Lewis a five-day deferred suspension to be placed on his record on July 2, 1971, as a result of an investigation held on May 27, 1971.
2. That accordingly, the Norfolk and Western Railway Company be ordered to clear the record of Machinist Helper Lewis of the five-day deferred suspension as well as the charges and investigation pertinent thereto.

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.

In this dispute Claimant was charged with violation of a safety rule, afforded an investigation, was found guilty and assessed a five day deferred suspension. The charge received by Claimant read as follows:

"You are hereby notified to report to the office of the Master Mechanic ... for a formal investigation to determine your responsibility, if any, in connection with violation of Safety Rule 1001 of General Rules of Safety Rules Book."

Aside from the fact that the record indicates Claimant had never been given a copy of the Safety Rules Book, the charge is fundamentally deficient. As a minimum, an employee being investigated for a disciplinary infraction has an absolute right to be informed prior to the hearing as to the particular incident complained of: the date, time if possible, and act in question. Without these basic elements in advance, an employee's ability to prepare an adequate defense is irreparably impaired.

As we said in Third Division Award 14778: "No man can defend himself against a charge to him unknown." Since Claimant was deprived of the procedural guarantee contained in Rule 33 of the Agreement, in that he was entitled to be apprised of the precise charge prior to the investigation, we shall sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of January, 1974.