

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward F. Carter, Referee

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**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION**

**MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the American Train Dispatchers Association that:

(a) The dismissal of Train Dispatcher H. C. Bundick on August 5, 1945, by the Missouri Pacific Railroad Company was contrary to the intent of Article 8(a) and (b) of the current schedule agreement which became effective August 1, 1945, and that:

(b) Because of such action by the Carrier not being permissible under the terms of the said Article 8(a) and (b) Train Dispatcher H. C. Bundick shall now be returned to service as train dispatcher with seniority unimpaired, paid for all time lost by him, and his record cleared of the charge.

**OPINION OF BOARD:** Complainant, while on duty as a second trick train dispatcher, cleared a train after he had been advised that an existing train order had not been delivered to its crew, failed to report the mishandling as required by the rules and changed his clearance record to show the train order as having been delivered instead of the contrary as originally written. An investigation was held and Complainant was dismissed from the service. The only question here raised is whether the notice complied with the Agreement which requires that "such notice shall be in writing and contain the specific charge or nature of complaint". The merits of the case are not in issue in this appeal.

The notice given the Complainant was in the following language:

"I have report of improper handling of train order 65 of July 24, 1945. I wish you would report with representative if you desire one, to ascertain the facts in connection with the handling of this order. Investigation to be held in this office, Saturday, August 4, 9:00 a. m."

The record disclosed that Complainant was fully aware that he was responsible for the delivery of train orders to the extent, at least, that clearance of the train involved should not have been permitted when he had knowledge that existing train orders had not been delivered to its crew. When he was advised by the notice directed to him that the improper handling of train order 65 of July 24, 1945, was to be investigated, he knew full well that his part in the mishandling was the subject of the investigation. The notice advised him to report at the investigation with his representative if he desired one. He knew full well that this meant that he was charged with the mishandling of the train order and that the investigation was for the purpose of determining his guilt or innocence in connection therewith. The record of the investigation shows that he understood that he was charged with mis-

handling of the train order. The very first question asked at the investigation was whether he had been properly notified of this investigation and if he was willing to proceed. To this he gave an affirmative answer. Complainant was given every opportunity to make a defense. He made no objection to the regularity of the investigation or to the fact that it was directed to his derelictions in the handling of the train order. There is nothing in the record to indicate that Complainant was in any manner mislead or prejudiced by the form of the notice and charge made. We think it was sufficient to show the nature of the complaint within the meaning of the rule. Award 2974.

The formation of a charge and the giving of notice thereof need not be in the technical language of a criminal complaint. It is sufficient if it appears that the one charged understood that he was being investigated and that he understood the dereliction of duty affording the basis of the complaint. While we do not recommend the notice here given as a model of perfection, yet it is sufficient when it appears that the complainant, as here, was not mislead thereby. No basis exists for an affirmative award.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employes involved in this dispute are respectively carrier and employes 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 notice given the Complainant was sufficient under the facts shown.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1946.