

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF SLEEPING CAR PORTERS**

**THE PULLMAN COMPANY**

**STATEMENT OF CLAIM:** \* \* \* for and in behalf of C. L. Tensley who is now and for sometime past has been employed by The Pullman Company as a porter operating out of the Chicago Western District.

Because The Pullman Company did, under date of October 30, 1945, take disciplinary action against Porter Tensley by giving him an actual suspension of thirty days on charges unproved; which action was unjust, unreasonable and in abuse of the Company's discretion.

And further, for the record of Porter Tensley to be cleared of the charges in the instant case and for him to be reimbursed for the thirty days pay lost as a result of this unjust and unreasonable action.

**OPINION OF BOARD:** Porter Tensley was notified of a hearing by Carrier on charges of insubordination and threatening a Night Agent prior to the departure of his train from the Oakland Pier. He was removed and another porter put in his place. A hearing was duly held, the parties were present, evidence was adduced, and a written transcript made and attested. The final statement in the transcript is by Carrier's Representative as follows:

"If there is nothing further to present, we will consider the meeting adjourned at 3:30 P.M. Decision is reserved and will be made within the period prescribed by Rule 50 of the Porter's Agreement."

The hearing was held and completed on October 2, 1945; the written decision suspending the Porter for 30 days was rendered by Carrier on October 30, 1945 or 28 days after the hearing was completed.

Rule 50 governs hearings. It first provides that an employe shall not be disciplined without a hearing and notice thereof. It next provides that an employe may request a hearing if he feels he has been unjustly treated. The rule finally provides:

"Hearings shall be held within ten (10) days from receipt of request for hearing or after notice shall have been mailed to an employe at his last recorded address, as the case may be, and decision shall be rendered in writing within fifteen (15) days after the hearing is completed."

It is clear that the above provision imposes the time limit within which a decision must be rendered upon both situations; namely, whether the pro-

ceeding is originally instituted by the Carrier or at the request of the employee. Furthermore, Carrier has expressly indicated that it so understands the rule by its statement in the transcript of the hearing in this case referring to this rule. However, Carrier rendered its decision not within 15 days, but 28 days.

Thus the question arises whether the decision is of no effect because of Carrier's failure in rendering it to observe the time limit required by the rule. It is our belief the decision must be held to be null and void.

The general purpose of the rules governing the procedure of imposing disciplinary measures by the Carrier is to protect the rights of the employees. We must assume the provision in question was agreed to for a definite reason or it would not be a part of the Agreement. Some limitation on the time in which disciplinary action should reach a final determination is a reasonable requirement and in harmony with fair play. It must have been the intention of the parties that under Rule 50, a decision to be valid should be rendered within the time prescribed or otherwise the decision would have no force.

However a supplementary question arises on the propriety of the Board to consider Carrier's violation of Rule 50 because it was raised for the first time in the argument before the referee. The Railway Labor Act and the rules of this Board in conformity thereto require disputed issues to be considered first on the property. But we are not considering here a disputed issue of fact about which the record is silent or inadequate and therefore is incapable of being decided here. We are considering an established fact which appears on the face of the record, which is not capable of being disputed, and which is established by a written document made by Carrier. The record establishing the violation of Rule 50 was before, and must have been considered by the Carrier's reviewing officer. Compare Award 325. The violation of Rule 50 was then a matter of record, apparent on the face of the record, and present for consideration for the first time on the property. Under these circumstances there is no reason or rule to prevent the Board from now considering Carrier's violation of Rule 50. Certainly consideration of all the rules of an agreement which are pertinent to the facts presented by the record is proper and necessary to a just determination of a controversy by the Board. In the situation we have here the discussion in Award 3437, and the decision in Award 137 and others to the same effect, about the necessity of first considering controverted issues on the property are not pertinent.

There are two decisions of this Board, in Awards 1497 and 1513, that appear to reach on contrary conclusion to ours about the effect of Carrier's failure to render its decision within the time required. On their face these decisions appear irreconcilable and seem to announce a principle which, carried to its conclusion, would hold that an employee, although disciplined by Carrier, is not prejudiced by Carrier's failure to observe the rules of the Agreement for administering discipline. If such is the principle to be deduced from these Awards we are unable to agree with it.

However, upon an examination of the record in Award 1497 facts appear which makes the Award applicable here. It was based on a different rule which provided: "Decision will be rendered within fifteen (15) days after completion of *investigation*." (Our emphasis). It was claimed the investigation as not completed until the date of the decision was rendered, and that was one of the disputed issues in that case. It was also argued there that since part of the punishment was an assignment of the employee to a different position less to his liking the delay of the decision did not prejudice him. This throws some light on the conclusion of the referee that "no rights of this employee were prejudiced by the delay". This conclusion apparently influenced the decision in Award 1513 which cites, relies on, and in effect adopts the reasoning of Award 1497. Thus, Award 1513 is equally inapplicable to this case. Another matter which apparently influenced the decision in Award 1497 was the fact that the discipline was imposed because of the violation of the safety rules by the employee. It follows that both such awards are not persuasive here.

Because of Carrier's failure to comply with Rule 50, Carrier's decision was void, and any ruling by us on whether or not the charges were proved would amount to a nullity. Accordingly that part of the claim must be sustained which seeks to clear the employe's record of the charge, and employe is entitled to be compensated for his wage loss, less any compensation received in other employment.

**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 the 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 Carrier violated the Agreement.

#### AWARD

Claim sustained in conformity with the Opinion for failure to comply with Rule 50 of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1947.