

Award No. 4935

Docket No. TE-4969

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago & Eastern Illinois Railroad that the Carrier violated the terms of the Telegraphers' Agreement when it assessed a suspension of ten days against Telegrapher J. G. Griffin after the time limit for rendering decisions in such cases provided by Rule 24 (c) had expired; and that Telegrapher Griffin be reimbursed for the ten days' work he was forced to lose as a result of this improper and violative action of the Carrier."

OPINION OF BOARD: The questions before the Board for decision are whether or not (1) there is a seven-day time limit for decision after the investigation or hearing, and (2) did the Carrier violate the Agreement by adding to the charge at the investigation or hearing the words "using language the nature of which was such that borders on insubordination"?

Rule 24 reads:

"(a) A telegrapher who has been in service for sixty (60) days or more, or whose application has been formally approved, shall not be discharged or suspended before being given a hearing, but may be held out of service pending the hearing or investigation, which shall be prompt, and shall be notified in writing a reasonable time in advance of the specific charges.

(b) A telegrapher who has received notice of discipline, or who considers himself unjustly treated, shall have a fair and impartial hearing provided he makes written request within ten (10) days after receipt of advice of discipline or cause for complaint, such request to be presented to the officer from whom such notice is received, and the hearing will be granted within ten (10) days after receipt of his request.

(c) A decision will be rendered within seven (7) days after completion of the hearing. Should a telegrapher be dissatisfied with the decision, he shall have the right, within ten (10) days, to refer the case, with written statement, to the next higher officer, and same will be investigated within ten (10) days of such notice, and a decision will be rendered within seven (7) days after completion of hearing.

At the hearing, or on the appeal, the employees may be assisted by one or more duly accredited representatives. A transcript of the evidence taken at the investigation or on the appeal, will be furnished on request to the employees or representative.

The right of appeal by employes or representatives, in regular order of succession and in the manner prescribed, up to and inclusive of the highest official designated by the railroad to whom appeals may be made is hereby established.

If the final decision decrees that charges against the employe are not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employe will be returned to former position and paid for all compensation he would have earned, less amount earned in any other service. If the employe is discharged and appeal is taken, the position will not be bulletined as a permanent vacancy until after the final appeal is acted upon."

The words "investigation", "hearing" and "appeal" are all used in this rule; however, the words "investigation" and "hearing" are used in such a way throughout the rule as to make it impossible from the reading of the rule to ascertain what is the investigation and what is the hearing. Part (a) of the rule states in substance that an employe in service for sixty days or more and whose application has been formally approved, shall not be discharged or suspended before being given a hearing. Part (b) refers to a hearing to be granted within ten days after notice of discipline or cause of complaint, said hearing to be granted within ten days of request. Part (c) states that a decision will be rendered within seven days after completion of hearing; also, that an employe may request within ten days to refer the case to the next higher officer and a decision rendered within seven days of the hearing. The second paragraph of (c) refers to the hearing or appeal. The most common use of the word "investigation" means "to inquire into" which would mean something that is done to find out what charge should be brought, if any, and to ascertain what evidence there is to substantiate the charge. The common use of the word "hearing" would be an opportunity to be heard on the charges that are brought against you, the right to confront the accusers, to examine them and, in the legal sense, a trial.

The common use of the word "appeal" would mean the right to have the facts and decision reviewed by a higher person or body of persons.

However, under Rule 24 of this Agreement, from the reading of the docket; the reading of the notice to appear dated March 7, 1949; the reading of the statement preceding the trial; the initial appearance of the employes accused, is interpreted by the parties as investigation.

The interpretation of hearing by the parties means that part of the proceedings referred to higher officers than the one holding the investigation proceedings. In other words, the appeal. These decisions must be rendered within seven days of the hearing. There is no time limit in the rule for a decision to be rendered after the investigation.

As to the second contention of the Employees, that an additional charge was placed against the Claimant and that the investigation was not conducted in respect to the specific charge received by notice of March 17, 1949, from the reading of the initial charge and the facts brought out at the investigation concerning the charge that "bordered on insubordination", all the facts could be linked up with the charge of "your inability to get along with fellow employes." It is the opinion of the Board that the Carrier complied with Rule 24 (a) in giving the employe a notice of specific charges. See Award 1513.

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 Employees 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 Carrier did not violate the terms of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.