

Award No. 5055
Docket No. MW-4937

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That under the application of Schedule Rule 25, Mr. J. C. Henderson be reinstated to the position of track foreman, Group 1, Class 1 of Rule 1 of the agreement between the Kansas City Terminal Railway Company and the Brotherhood of Maintenance of Way Employees, effective November 1, 1938;

(2) That Mr. Henderson be paid the difference between the amount received as track laborer and the amount he would have received as track foreman for the period beginning April 2, 1949, until the date of his reinstatement to a position of track foreman.

OPINION OF BOARD: The facts are not in dispute. The claimant was given oral advice of his demotion as of April 2, 1949. On the same day, he made a written request that the supervisor furnish him with a written statement of the reasons for this action. On April 5th the Carrier advised the claimant of its reasons in writing. A written request for investigation was made by the claimant on April 14, 1949.

Rule 25 is deemed controlling:

"DISCIPLINE AND GRIEVANCES

Rule 25.

Employees disciplined or dismissed will be advised in writing if requested, the cause for such action. Upon written request within ten (10) days from date of advice of discipline or dismissal, employee will be given an investigation within ten (10) days from date of request, by an officer superior in rank to the officer having administered the discipline, at which investigation the employee may be represented by one or more representatives of his own choice, and decision will be rendered within twenty (20) days after completion of the hearing. A copy of all evidence taken in writing at the hearing shall promptly be made available for the use of a duly accredited committee, when such committee requests same."

The Employees have cited Award No. 4606 in support of their position. In that case, however, the applicable rule stated that upon an employee being disciplined he "will be informed in writing of the reason for such action upon action being taken." Under the rule applicable in this case, however, the Carrier is not required to advise the employee of the reason for the discipline

and the reasons are not required to be in writing unless the employe makes a request for a written statement of the reason for the discipline. The date upon which the Carrier complies with the employe's request for written reasons for its action does not affect the period of limitation set by the parties. Rule 25 simply states that an employe must make a request for an investigation within ten days from the date of the written advice of discipline, and the Board has no right to read words into the Agreement. The period of limitations set forth by the parties dates from April 2, 1949, when the employe was orally advised of the discipline. Whether the employe on that date was fully advised as to the reasons is not controlling under the language used by the parties. The purpose of Rule 25 is to prevent undue delay in the adjustment of complaints following disciplinary action. The provisions of Rule 25 must be considered so as to give effect to that purpose. The employe has a right to an investigation within ten days after being advised of disciplinary action. Although the language used does not specify the time when the Carrier shall give its written reasons for its action, certainly the Carrier must give its reasons at the time of the investigation, which is to be held ten days after request for the investigation by the employe. It is therefore clear that under this procedure the purpose of Rule 25 is effected by not permitting undue delay in the adjustment of complaints in disciplinary cases. On the other hand, if the Employes' interpretations were to be upheld, the employe could delay his request to the Carrier for a written statement of the reasons for its action for several months. The employe could then make a request for an investigation within ten days from the receipt of the Carrier's reasons. Such a procedure would be contrary to the purpose of Rule 25.

This case is to be distinguished from the Rule and the facts considered in Award 4606. In that case the Rule required written notification of the reason of a Carrier's action at the time action was taken, and the Board found that the claimant would be complying with the Rule by requesting an investigation within the time period required after written notification. However, with reference to the right to an investigation, the Board in that case stated: "That is waived only by a failure to demand it within the time limited." It must be noted that under the Rule considered in Award 4606 the employe was not required to request the reason for the Carrier's action. The Carrier in that case was required to give a written notification of the reason for its action at the time such action was taken.

The Board must find that under the Rule and the facts here considered, this claimant waived his right to an investigation by failure to demand it within ten days after he was orally advised of his demotion.

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 evidences, 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1950.