Award No. 5228
Docket No. TE-5239

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-Southwestern Railway Lines that:

(a) The Carrier violated Article 27-2 of the Telegraphers' Agreement when it failed to comply with the request of Agent W. L. Woods, Lewisville, Arkansas, that he be granted a hearing pursuant to Article 27-2 on the grounds that in being required to remit $20.00 to the Carrier he considered himself unjustly treated; and

(b) By reason of Carrier's failure to grant Agent Woods a hearing pursuant to Article 27-2 of the Telegraphers' Agreement his record shall be cleared of the charge and he shall be refunded the amount of $20.00 which he was required to remit.

EMPLOYES' STATEMENT OF FACTS: W. L. Woods, agent at Lewisville, Arkansas, continuously since May 5, 1925, made remittance of company funds, consisting of currency and one check, by express to Mississippi Valley Trust Company, St. Louis, Missouri (Carrier's depository bank), October 12, 1949, which remittance was accompanied by Agent's remittance ticket No. 7, on which he listed the number of bills of each denomination and the check by number as follows:

3	$100 bills	$300.00
2	$20 bills	20.00
1	$10 bill	10.00
1	Check No. 23320	7.89

Claimant Woods listed two $20 bills in his remittance ticket, but in error extended the total as $20.00 instead of $40.00. The bank teller handling the remittance failed to check the remittance against the deposit ticket and failed to make note of the discrepancy. A least he failed to call the attention of the Accounting Department, the Treasurer, or Agent Woods, to the discrepancy in the remittance ticket. Duplicate copy of the remittance ticket was

It involved discipline while the present case does not. Although the time limit provisions were cited in handling the case, the discipline was removed for other reasons (Exhibit 22). Furthermore, it was pointed out that the handling was with the Division Superintendent whose decision would not necessarily represent the position of parties signing the agreement and who of course interpret its terms.

The time limit provisions of the agreement were included to insure prompt hearing in discipline matters if the employe desires hearing. Here it is contended they should apply in case resulting from a dispute between an employe and the bank as to the amount of money remitted. The hearing was not requested until nearly three months had elapsed after the remittance had been made. The amount involved was not large and a continuing claim not involved. Hearing was offered within seven days after the date requested. It seems evident that no prejudice to the agent's case could result from conducting hearing seven days after request instead of one day, two days, etc.

Even if the limits applied in cases other than discipline (which they do not) they were included to insure prompt hearing, and clearly were not intended to afford a means by which an employe might enforce a demand regardless of its merits, or enable him to secure without hearing what he obviously does not expect (as in this case) to secure through hearing. It seems obvious that applying Article 27-2 in the manner the Employes now request would be contrary to its plain language and intent, and enlarge the rule to the extent that an employe might feel that he could enforce any demand, no matter how fantastic, if not given hearing within five days after requesting one on the subject.

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As previously stated, the fact that Mr. Woods elected to forego hearing indicates he had nothing to present that he felt would affect his case. Apparently he presented his case fully. He wrote to the bank, the Auditor and the Superintendent, and talked with the Traveling Auditor. The General Chairman discussed the matter in conference with the Superintendent and on appeal with higher officers. It seems plain that all the facts which could be developed were brought out and given full consideration. The main fact in dispute relating to the amount of money remitted, evidently could not be cleared up by a hearing.

In conclusion Carrier wishes to emphasize that it has shown no disposition to be unreasonable in the matter of handling accounts. It is recognized that errors will occur in such matters, but it cannot, in keeping with its duty of efficient, economical operation, condone such careless handling by assuming a loss such as this in which the employe fails to use the ordinary, elemental precaution of keeping a current check on the funds he collects and is under bond to deliver. It must necessarily exercise discretion in relieving any employe of a shortage in accounts. Sustaining the present claim would only encourage employes in careless handling of work and promote a feeling that should be relieved of any consequences of their derelictions as a matter of right, regardless of circumstances.

The facts pointed out show that the decision in this matter was not arbitrary nor unreasonable in any respect, and Carrier respectfully requests that it not be disturbed.

(Exhibits not reproduced.)

OPINION OF BOARD: The disposition of the claim presented in this docket involves the proper application of Article 27-2 to the grievance of an employe who considers himself unjustly treated. More specifically stated, the issue is whether or not the time limitations therein set forth are applicable in the handling of such grievances.

Rule 27-2 provides as follows:

> "An employe disciplined, or who considers himself unjustly treated, shall have a fair and impartial hearing, provided written request is presented to his immediate superior within five (5) days of the date of the advice of discipline, and the hearing shall be granted within five (5) days thereafter."

The rule as written is clear at least in this respect, that an employe who is disciplined or considers himself unjustly treated is entitled to a fair and impartial hearing. Insofar as disciplined employes are concerned, it is also clear from the language of the rule that in order to preserve the right to a fair and impartial hearing, the employe must make written request to his immediate superior within five days after he receives notice (advice) of the discipline assessed. The Carrier is then obligated to grant a hearing within five days after such request. (How that five days is calculated is a question not germane at this point in our consideration of this matter.)

It is to be noted from the language of the rule that the proviso limiting the employe in the exercise of his right to a fair hearing and the Carrier's obligation with respect thereto is confined to discipline cases. What the parties intended with respect to these limitations and obligations insofar as unjust treatment cases are concerned is not discernible from the language of the rule. The record sheds no light on this question from the standpoint of an accepted practice nor agreed interpretation of the rule.

In their very nature unjust treatment cases are not clearly susceptible of specific time limitation measured from some objective happening, because of the subjective considerations from which they arise. The individual employe controls their inception in the operation of his mind.

Naturally, since the Carrier cannot know what is going on in the employe's mind, some burden must be assumed by him in notifying Carrier as to his desire for a fair and impartial hearing. How that is done is again not clear from the rule. (Here, of course, that question is not involved because it is clear that written request was made for such a hearing.) What Carrier must do from the standpoint of the time in which it must grant or hold hearing after notification that the employe considers himself unjustly treated is not covered by the rule for the word "thereafter", the final word in the rule, refers back to the time written request is served upon the superior officer within the five-day period following advice of discipline. In the interpretation of any written Agreement it is, of course, the intention of the parties which governs. There are many rules with respect to how to determine that intention and many of them have been discussed at length in other Awards of this Board. Here, however, we can only conclude that insofar as specific time limitations are concerned in unjust treatment cases, the parties have omitted to express any intention, ambiguously or otherwise. We cannot supply that omission for them, but merely apply the general rule of reasonableness. Hence, we conclude that under this Rule, in unjust treatment cases the Carrier is required to afford the employe a fair and impartial hearing within a reasonable time after notification that an employe considers himself unjustly treated, and desires such hearing. We recognize that in some respects from a practical standpoint this is not a desirable result but the remedy lies in negotiation to reword the rule so as to express the intention of the parties on this subject and not by interpretation.

In this instance, inasmuch as the General Chairman insisted upon the application of the five-day limitation, the claimant has not had a hearing on his grievance. Because of this insistence, we have had no opportunity to determine whether Carrier would or would not have granted claimant a hearing within a reasonable time. In any event, claimant should not be deprived of rights because of the fact that the Organization sought a determination from this Board as to the application of Rule 27-2. Accordingly, it is found that Carrier should afford the claimant a fair and impartial hear-

ing as requested in General Chairman Fitzhugh's letter of January 4, 1950 to Superintendent Ferguson within ten days after receipt of this Award.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier should afford claimant a fair and impartial hearing as requested in General Chairman Fitzhugh's letter of January 4, 1950 to Superintendent Ferguson within 10 days after receipt of this Award.

AWARD

Claim disposed of as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 26th day of February, 1951.