Award No. 6213
Docket No. CL-6195

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) Messrs. W. E. Gillihan, Fruit and Vegetable Inspector, and C. E. Byington, Cooper in the same department, were improperly removed from the Bureau's service at St. Louis, Missouri on or about December 11, 1950.

(b) That Messrs. W. E. Gillihan and C. E. Byington be reinstated to service with all right unimpaired and compensated for all monetary loss sustained from November 10, 1950.

OPINION OF BOARD: This is a disciplinary proceedings involving the Bureau's employes William E. Gillihan, an Inspector, and Carl E. Byington, a cooper, both working its Fruit and Vegetable Department at St. Louis, Missouri. The System Committee contends they were both improperly removed from the Bureau's service and asks, because of that fact, they be reinstated to service with all rights unimpaired and compensated for all monetary loss sustained from November 10, 1950.

By letters of its District Inspector M. F. Donohue, dated November 9, 1950, the Bureau notified each of the Claimants that he was being charged with "conduct unbecoming a Bureau employe" and, because thereof, was being suspended from service as of November 10, 1950. By this notice they were also advised that a hearing on the charges made would be held at 10:00 A. M. on November 16, 1950 in Room 601, Landreth Building, 320 North Fourth Street, St. Louis, Missouri. This date was, by mutual agreement, extended to December 5, 1950. Joint hearing was held from December 5 to 7, 1950, inclusive. The Bureau found each of the Claimants guilty and, by letter dated December 11, 1950, advised them they were dismissed from its services.

The claim is made that the Bureau failed to comply with the following provision of Rule 20 of the parties' effective Agreement: "An employe, charged with an offense, shall be furnished with a letter stating the precise charge at the time the charge is made."

Admittedly one of the functions of the Division in discipline cases, if properly raised, is to inquire into and determine whether or not the rules

in the Agreement relating to hearings and investigations have been violated. In this regard we must accept the rules as written. This Division does not have authority to either revise or amend such rules but only to interpret and apply them as they have been written and agreed to by the parties. The question here presented was properly raised at the very threshold of the joint hearing. It was never waived. The Bureau's representatives were fully aware of the fact and had ample oportunity to correct such deficiency. This they did not choose to do but elected to proceed on the charges as made.

"Conduct unbecoming a Bureau employe" does not inform the party against whom it is made whether it relates to "conduct" while on duty, while off duty but on the Bureau's property, or while off duty and off of the Bureau's property. Certainly where and under what circumstances it occurred would be of material concern to the party charged. Neither does it inform the party charged of when such "conduct" took place, where it took place or what it consisted of. Certainly all of these matters are of materiality in stating the "precise charge" being made and which the Agreement provides shall be done "'at the time the charge is made."

At the hearing Donohue testified, and the Bureau now states, that the "conduct" complained of is based on and relates to what happened during the night of August 30 and 31, 1950, as evidenced by Report No. 67939 of the Police of the City of St. Louis, and what happened in the early morning of November 5, 1950, as evidenced by Report No. 86328 of the Police of the City of St. Louis. Of course what is now contended is the basis of the charge, but which was made no part thereof, does not meet the requirements of this rule which specifically relates to the time when the charge is made. If the charge made had contained this information it would have been sufficient.

It may be true, as the Bureau now states and which the evidence adduced tends to support, that both Claimants had knowledge of the Police Report relating to the incident that happened during the night of August 30 and 31, 1950 and what it contained; that the Claimants knew why the charge was being made, as evidenced by the letter dated November 11, 1950, which they obtained from Louis Millner; and that the Bureau used good judgment, in so far as Claimants' families are concerned, by not specifically mentioning in the letter containing the charge the information contained in the Police Reports, particularly the one relating to the incident that happened during the night of August 30 and 31, 1950. But these facts do not change the requirements of the rules. We are not permitted to make any qualification of the provisions thereof which are clear and unambiguous. The rule is written for the protection of all the employes covered by the Agreement, not just these Claimants. In any discipline case it could, almost without exception, be shown that the employe charged had knowledge of and was aware of any incident in which he had participated which the Bureau intended to use as a basis for discipline. But that fact, under such a rule as we have here, would not relieve the Bureau from advising him precisely what it was that it claims he was guilty of so he could, if possible, prepare to defend against it. It is true that this requirement can be waived, either expressly or by not properly raising it, but such is not the situation here. In the absence of such waiver the rule makes a notice complying therewith, that is, a notice setting forth the precise charge or charges being made, a condition precedent to the right of the Bureau to hold a hearing or investigation based thereon.

Numerous other questions are raised, including the sufficiency of the proof, but they relate to the hearing itself and what took place thereat. In view of what we have already said there is no need for discussion thereof for under our holding the insufficiency of the charges made, proper objection on that ground having been made, prevented the Bureau from holding a hearing based thereon. Consequently no proper hearing was or could have been held. However, we do take notice of the fact that (b) of the claim

asks compensation for "all monetary loss sustained from November 10, 1950" whereas Rule 25 of the parties' Agreement provides this shall be "less any amount earned in other employment." It should be so limited.

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 Carrier violated the Agreement.

AWARD

Claim (a) sustained.

Claim (b) sustained, less any amount earned in other employment during the time for which the claim is allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1953.