

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: * * * for and in behalf of S. F. Whitney, who is now, and for some years past has been, employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company as a porter.

Because the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, did, through Superintendent M. P. Ayars, take disciplinary action against Porter S. F. Whitney in a decision originally dated June 1, 1955, by giving him an actual suspension of ten (10) days without pay. And further, because the disciplinary action exacted of Porter S. F. Whitney by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, through Superintendent M. P. Ayars, was a violation of the rules of the Agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Brotherhood of Sleeping Car Porters, which represents the class of employees of which Mr. Whitney is a part, which provides among other things that employees shall not be disciplined without being given a fair and impartial hearing.

And further, because the disciplinary action taken against Porter Whitney was unjust, unfair, capricious, arbitrary, and unreasonable and a definite violation of the Agreement above referred to.

And further, for the service record of porter Whitney to be cleared of the charge in this instance and that he be reimbursed for the ten (10) days' pay lost as a result of the action taken by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

OPINION OF BOARD: The facts are neither complicated nor in dispute. On May 17, 1955 the Carrier directed a letter by registered mail to the claimant's last recorded address preferring specific charges and setting a date for hearing thereon for 3:30 P. M., May 23, 1955 in Chicago.

Claimant did not appear at the place and date set for the hearing. On June 1, 1955, claimant was advised by registered mail, which was directed to the same address as the notice above and receipted for by claimant, as follows:

"Chicago, Illinois, June 1, 1955

File: 578-Whitney, S.F.-J-3

Mr. S. F. Whitney
4030 Calumet Avenue
Chicago, Illinois

Relative to charge preferred against you in our letter of May 17, 1955, and because of your failure to appear for hearing scheduled for 3:30 p. m. Monday, May 23, in this office, this is to advise that you are hereby suspended for a period of ten (10) days, effective June 3, to June 12, 1955, inclusive.

Yours truly,

M. P. Ayars—Superintendent"

The Carrier admits that claimant did not have a hearing but contends that such omission was entirely due to his failure to appear for same.

The evidence of record satisfies us that the claimant did not receive the notice of hearing but that every effort was made by the Post Office Department to deliver it to him and in addition the Department left a notice at his home address advising that a letter was at the Post Office. The evidence of record also indicates that he was released from duty at about 3:00 p. m. on May 18, 1955 in Chicago, where he resides and did not report again for duty until 8:00 a. m., May 21, 1955. It might be noted in passing that Carrier's Exhibit "G" indicates that on May 23, claimant was in service on No. 5 from 8 a. m. until May 24 when released in Chicago at 3 p. m. This assignment of course indicated that he was in service at the time set for the hearing.

The Rule involved reads as follows:

"Rule 40—Hearings

"An employe shall not be disciplined, suspended or discharged without a hearing. He may, however, be held out of service pending investigation. An employe shall be notified in writing of the time and place of hearing and the specific charge against him.

"An employe who considers he has been unjustly treated and who desires a hearing shall make written request containing his specific charge within fifteen (15) days from the date of the cause of complaint.

"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 ten (10) days after the hearing is completed."

This Rule could not be more clear. It contemplates "notice" and prescribed the requirements of its substance as well as the manner of giving such notice. There is no question in our minds that proper notice was given. With respect to the required "hearing" we feel just as strongly that it was not held or "completed." The "hearing" was just as much a requirement, before any form of discipline could be imposed, as was the notice for the hearing and that whether or not the claimant was present or absent for any reason. There is no requirement that a claimant must be present at a hearing; Rule 40 is designed for his protection and he may or may not avail himself of his rights as he sees fit. Obviously if he does not appear, he waives his rights to be heard, produce witnesses in his behalf, or question witnesses. This is not to say that we condone evasion of receipt of process, if that be the case here which we need not necessarily determine, but in this case we can

find no waiver on the part of the claimant that would excuse the Carrier's stated obligation to hold a hearing.

We are not impressed with the Carrier's argument that evasion of receipt of process would make it impossible to hold a hearing. As here, if the notice requirements of the Rule are complied with, the Carrier could proceed to a hearing in the absence of the claimant and based upon the evidence adduced make its finding of guilt or innocence and impose appropriate discipline if warranted. This would provide the necessary basis for appeal under Rule 43 if the claimant so desired.

As a matter of fact in the docket for Award 6777, referred to below, the Carrier set forth in its submission statements concerning the merits which it could have properly introduced at a hearing, if it had been held, and established a prima facie case, which unrefuted would have provided the basis for disciplinary action.

On the basis of the above discussion and the clear language of the Rule we are compelled to find that the Carrier's failure to hold a hearing was a violation of Rule 40.

In so concluding we are not unmindful of Award 6777, decided without referee, which involved the same parties and the same Rule. The Board's opinion there consists of one sentence "The record herein discloses no reason to disturb the action of the Carrier." It is impossible for the author of this Award to determine by what considerations the Board was moved to deny the claim. In the light of the language of a clear and unambiguous rule we do not feel compelled to follow as precedent an award as to the basis for which we are not informed. Appreciating as we do the sound principle that following precedent awards construing identical rules tends to be a stabilizing factor in the field of labor relations, we would point out that precedents are no more persuasive than the logic of the reasoning underlying their determination, and that cannot be evaluated here because it is absent.

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 Employees 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 violated.

AWARD

Claim sustained. The monetary claim is sustained for the amount of compensation claimant would have earned, less compensation received in other employment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1957.