

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) Discipline of thirty days' suspension be removed from the record of Jesse W. Vandegrift, Clerk, Auditor of Freight Traffic, Accounting Department, Philadelphia, Pa.

(b) Clerk Jesse W. Vandegrift be reimbursed for all monetary loss sustained from October 13, 1958 to November 11, 1958, inclusive. [Docket 618]

OPINION OF BOARD: The Claimant was a Clerk in the Freight Traffic Office at Philadelphia. A dispute arose between the Claimant and Chief Clerk as to the application of a rate increase. During the discussion, the Claimant became hostile and stated he would not apply the rate increase in the manner directed, but instead, wanted a written reply to his request for clarification of the rates. Nevertheless, the Claimant did in fact carry out the rate increase as directed. The Claimant was charged as a result of his disagreement with the Chief Clerk, as follows:

- "1. Insubordination by refusing to comply with instructions issued by duly appointed Supervision.
2. Displaying hostile attitude toward Supervision in its efforts to improve the manner in which you handle claims."

A trial was held on July 15, 1958, at which time the second charge was dismissed and Complainant found guilty of charge one.

The Claimant contends that under the Rules 6-A-1(a), 6-B-1 and 6-C-1 (a) discipline was imposed without giving him reasonable notice in writing of the exact charge, thus depriving him of a fair and impartial trial. Also, the Assistant Auditor of Freight Traffic, who assisted at the trial, was the Supervisor of the Chief Clerk. The Assistant Auditor of Passenger Traffic conducted the trial.

The Carrier contended that both the Claimant and his representative knew all the pertinent facts concerning the charges prior to the trial. Also the Claimant's own admission at the trial indicated he had no objections to the manner in which the trial was conducted.

We are of the opinion that although the charges were not technically explicit in all details when issued to the Complainant. However, prior to the trial, he was fully acquainted with the time, place and circumstances of the charges. The record reveals that both the Claimant and his representative inquired about the charges prior to the date of trial and were given complete information concerning the same. This information adequately enabled them to prepare a defense, which is all the Rule requires. See Award 6866 of this Division. The Claimant at the trial also admitted that the trial was conducted properly.

The record also shows that the Complainant was insubordinate in that he refused to comply with the requests of his Supervisor, and was uncooperative in his attitude. The Complainant's only explanation to the charges was a denial or lack of recollection of the incident. There was no evidence that the Complainant failed to carry out the work as ordered, although his remarks and attitude toward his Supervisor is encompassed within the definition of insubordination. See Award No. 4132, Second Division.

We further find nothing irregular with the method of appeal. The first Officer of the Carrier appealed to was not present at the preliminary hearing. His only association with the incident was that of approving the decision not making the decision. Thus, there was nothing improper in his presiding at the hearing on the appeal.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.