

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the effective Agreement when, under date of May 25, 1959, it notified Trackmen Vincenzo Scialdone, Clause Peaseckle, John Pellegrino and Ernest Cefferelli that they were being reprimanded on the basis of testimony developed at hearing held on May 15, 1959.

(2) The Carrier violated the effective Agreement when, under date of May 25, 1959, it notified Section Foreman Michael Martini that he was being suspended from service from June 1, 1959, to June 30, 1959, on the basis of testimony developed at hearing held on May 15, 1959.

(3) The Carrier violated the effective Agreement when, under date of July 2, 1959, it notified Trackman Michael Zappone that he was being reprimanded on the basis of testimony developed at hearing held on June 22, 1959.

(4) The service record of Trackmen Scialdone, Peaseckle, Pellegrino, Cefferelli and Zappone be cleared of reprimand assessed as outlined in Items (1) and (3) above.

(5) Section Foreman Martini be allowed a wage adjustment to provide him pay for time that he was improperly held out of service during the period June 1, 1959, to June 30, 1959, both dates inclusive.

OPINION OF BOARD: The issue is whether a hearing on charges was held within ten days, as provided in Rule 35(a) of the Agreement.

The uncontroverted facts in the record show that on April 21, 1959, Claimants allegedly did twenty minutes of track maintenance work for a shipper, without the approval or consent of the Carrier. The first knowledge Carrier had of this was on May 5, 1959, when it received a letter from the shipper informing Carrier of this incident. Carrier notified Petitioners' Local Chairman on May 6, 1959, and advised him that a hearing would be held on May 8, 1959. At the request of the Local Chairman, the hearing date was postponed to May 15, 1959.

A hearing was conducted on May 15, 1959, on charges against all Claimants except Michael Zappone, who was ill and could not attend. A separate hearing on charges against Claimant Zappone was held on June 22, 1959, when he recovered from his illness and was able to attend.

Claimant Martini was suspended from service without compensation for approximately thirty days, and the other Claimants were reprimanded. No appeal from the decision was taken by Claimants on the property, and no appeal was filed with this Board.

Petitioner contends that a hearing must be held within ten days of the date of the offense. Since the offense occurred on April 21, 1959, and no hearing was held until May 15, 1959, the claims should be sustained.

Rule 35 (a) provides as follows:

"RULE 35.

(a) An employe will not be disciplined or dismissed without a hearing before the proper official, at which hearing he may be accompanied by a representative of his choice. He may, however, be held out of the service pending such hearing. The hearing will be held within ten (10) days, and a decision will be rendered within ten (10) days after the hearing. Stenographic report of investigation and hearing, when one is made, will be furnished upon request."

The Rule does not say that the hearing must be held within ten days after the occurrence of the alleged offense. The only reasonable construction of this Rule is that the hearing must be held within ten days after the Carrier has notice of the occurrence. Any other interpretation would impose a penalty upon the Carrier, which could not have been the intent when this Rule was agreed to. It would be an unreasonable restriction to uphold Petitioner's position.

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 did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1964.