

Award No. 13040

Docket No. TE-12209

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. The dismissal of A. N. Thibeu from service on May 18, 1959 was without just and sufficient cause, arbitrary, unfair, and in violation of the agreement.
2. Carrier shall reimburse A. N. Thibeu for all time lost while being held out of service from May 18, 1959 to July 18, 1959 inclusive.

OPINION OF BOARD: This claim arises by reason of discipline imposed on Claimant after a derailment on May 18, 1959. Claimant was the regularly assigned second trick telegrapher at "KY" Tower, Knoxville, Tennessee, prior to his dismissal on May 18, 1959. He was reinstated on July 18, 1959 and now claims compensation for the time lost while being held out of service between May 28 and July 18, 1959.

Claimant's major contention is that he was not properly notified in writing of the charges that were placed against him following the derailment as required by Rule 29 (b) of the Agreement. This rule reads as follows:

"(b) An employe notified to attend an investigation or hearing in which he is involved shall be advised in writing the nature of the charges against him and shall be given a reasonable time in which to secure witnesses in his behalf and arrange for the presence of his representatives."

The notice received by Claimant, and complained of, reads as follows:

"Knoxville — May 19, 1959 jaj/1

Mr. Curtis Smith, Engineer
Mr. A. N. Thibeu, Operator
Mr. J. A. Hayes, Operator

Arrange to attend an investigation in this office at 1:30 P. M., Wednesday, May 20, 1959, to determine the facts and develop the responsibility for the derailment of two cars in Train No. 52, Engine 4157 near M.P. 131.6-A, at about 12:25 A. M., May 18, 1959.

Arrange to bring any witnesses or representatives you desire.

Cy - Mr. Huckaby:

/s/ J. A. Johnson
Superintendent

Arrange to have Yardmaster John Lacey present as a witness.

J. A. J."

Claimant points out that this did not specify charges against anyone and purports to notify him of an investigation "to determine facts and develop responsibility" for the derailment in question. He cites several awards, including Awards 3011, 12814, and 11019 for the proposition that the notice must be more specific and definite with regard to the charges. He then contends that the investigation and the subsequent discipline was void by reason of the defective notice.

Carrier takes the position that the notice served its proper purpose in that it alerted the Claimant to the subject matter of the hearing and allowed him to properly prepare his defense. They further counter Claimant's argument by pointing out that at the investigation, as a preliminary matter, Claimant admitted receipt of the notice, that he understood the charges placed against him, that he understood the subject and purpose of the investigation, that he was ready to proceed, that he declined when asked if he desired a postponement, that he had a witness of his own choosing to aid him in his defense and that he elected to represent himself.

After carefully considering the record and the positions of the parties, we are compelled to deny the claim. We are unable to find any evidence which would indicate that the Carrier acted in violation of the Agreement. If the notice of the investigation was in any way defective, there is no evidence that Claimant was misled in any way thereby. On the contrary, it appears that he willingly elected to proceed and thereby waived any technical or procedural defects. It does not appear anywhere that he was harmed or treated unfairly in being allowed to defend himself against charges of acts which he both understood and admitted. For these reasons, we hold that the claim is without merit.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1964.