

Award No. 13219

Docket No. CL-13093

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5117) that:

(a) Carrier violated the current Agreement, effective January 15, 1955, and supplements thereto, between the parties, when it failed to render a decision within ten (10) days following completion of investigation on August 23, 1961.

(b) Edward B. Pongones shall now be compensated for all lost time as follows: Five and one-half (5½) hours at pro rata rate of Engine Dispatcher's position for April 28; eight (8) hours pay at pro rata rate for April 29, 30, August 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31, and September 1, 1961; also eight (8) hours pay at overtime rate for August 22, 23, 29 and 30, 1961.

(c) Edward B. Pongones shall now have his record cleared of all charges against him.

OPINION OF BOARD: The dispositive issue here presented is whether the Carrier failed to comply with the following rule of the Agreement:

"RULE 26—INVESTIGATION

"An employe who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation. He may, however, be held out of service pending such investigation. The investigation shall be held within ten (10) days of the date when charged with the offense or held from service. A decision will be rendered within ten (10) days after completion of investigation."

The material facts are that Claimant was charged with and found guilty of being intoxicated when he reported for duty on April 28, 1961. After two postponements the investigation was held on August 22 and 23, 1961. The discipline assessed was seven days suspension (from April 28 to May 4, 1961) and 30 demerit marks. Notice of the discipline was issued and sent on September 1, 1961, via railroad mail to Claimant's supervisor for personal delivery to him. Because of rest days on September 2, 3, 4, 5 and 6 (the latter two

were Claimant's off days) the formal notice of discipline was not delivered to Claimant until September 7, at which time he refused to sign the receipt. It was finally delivered to him on September 18, 1961.

The Employees contend, in effect, that Rule 26 requires the Carrier not only to render a decision but to insure its receipt by the employee within the ten-day period. The rule does not make the Carrier an insurer nor can it reasonably be read to mean that a decision is not "rendered" until it is received. (See Awards 10254, 12001, Fourth Division Awards 1177, 1717; First Division Awards 16366, 16739). This line of authority holds, in effect, that notice of the decision must be dispatched within the time limit in such manner as may reasonably be relied on to actually get the notice to the employee, and that *prima facie* evidence of compliance with the rule stems from the date the notice is sent, not from the date it is received.

We concur in the reasoning and conclusion of these decisions interpreting and applying similar disciplinary notice rules, and find them controlling here. And while we agree with the Employees that this Carrier might well have used the registered mail system of the U. S. Post Office Department rather than relying, as it did, on the vagaries of the railway mail, nevertheless that failure is not sufficient to set aside the discipline imposed, particularly where the fact that the decision was rendered and dispatched on September 1, 1961, (within the time limit), was not challenged by the Employees.

Third Division Awards 8160 and 8820, cited and relied upon by the Employees, are not in point. There the disciplinary decisions were not rendered within the prescribed time period and, accordingly, rule violations were found. Thus it is clear that these holdings are not applicable to the facts of this case.

In view of the foregoing, the claim lacks rule support and must, therefore, be denied.

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 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 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 19th day of January, 1965.