

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 701, when it suspended Signalman B. J. Pate from service following a motor car accident on November 14, 1961.

(b) The Carrier now be required to compensate Signalman B. J. Pate for all time lost account of the Carrier violation outlined in Paragraph (a). [Carrier's File No.: 135-296-106 Spl.; Case No. 154 Sig.]

OPINION OF BOARD: The Carrier alleges in this case, that Signalman B. J. Pate failed to operate Motor Car No. 8438, in a safe manner on November 14, 1961. It charges that such failure resulted in the demolition of said motor car when it was struck by Extra 9308 South, at Mile Post 95 just south of Abbott, Illinois. As a result of an investigation into such allegations, the Carrier suspended Pate from the service of the company, for a period of sixty (60) days.

The Organization urges that the Carrier committed four fundamental errors in handling this case.

The first assignment of error involves the notice of the investigation. It is argued that the notice, which stated that a formal investigation would be held, ". . . to determine the facts and your responsibility, if any, in connection with Motor Car #8438, operated by you and occupied by Assistant Signalman M. D. Miller, being struck by Extra 9308 South, at Mile Post 95 just south of Abbott, Illinois at approximately 3:20 P. M., November 14, 1961"; was not sufficient to charge Claimant with any infraction of the

agreement rules. The basic purpose of the notice is to give the employee an opportunity to prepare himself to defend against the accusations of the Carrier. We are of the opinion that the notice involved in this case was sufficient to advise the Claimant of the nature of the investigation. We doubt, that having received this notice, the Claimant was surprised by the conduct of the investigation which followed. We therefore hold that such notice was not a violation of due process and therefore not an error as alleged.

The Carrier suspended Claimant pending this investigation. The Organization argues that this is a violation of Rule 701(a), which reads as follows:

"RULE 701: (a) An employee who has been in the service more than 60 days will not be disciplined or held out of service without first being given an investigation. He will be advised in writing at least seventy-two hours prior to such investigation of the exact charge or charges which have been made against him. Charges will be made in writing within ten days of knowledge of an offense. Suspension in proper cases pending a hearing shall not be deemed a violation of this rule." (Emphasis added.)

Therefore, the second error presented centers around the language, "proper cases". We are of the opinion that this language is discretionary in nature, and that such discretion is within the province of the Carrier. This implies of course, that where discretion is involved, abuse of discretion may sometimes exist. However, since the investigation was timely held, and since the record seems to support the charges heard therein, we find no abuse of discretion in this instance, and hold that the suspension was proper.

The third error assigned is that the Carrier failed to grant Pate hearings subsequent to his suspension, in violation of his rights under the Signalmens' Agreement. Rule 701 provides the machinery for hearings subsequent to the disciplinary action. This record is void of any declination by the Carrier to comply with any properly presented request for a hearing under said rule.

The final error presented is that Signalman Pate was not responsible for the accident involved in this dispute. We are of the opinion that Carrier has established Claimant's responsibility for the accident, and there is nothing in the record to substantiate Pate's defense to the allegations.

Since the Claimant has failed to assign and prove fundamental error in the handling of this disciplinary action, we shall leave the same undisturbed.

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 November 1965.