

Award No. 14021
Docket No. CL-12300

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**

CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4836) that:

1. The Carrier violated the current Clerks' Agreement when it suspended Mr. H. O. Bacon from service for thirty (30) days beginning September 26, 1959, which was unjust, unfair and taken in violation of Rules of the Agreement.

2. That Carrier now be required to clear Claimant Bacon's record of the charge and compensate him for all wage loss incurred as a result of the illegal acts of Carrier.

OPINION OF BOARD: Before this Board the Carrier took the position that the claim had not been handled in accordance with the requirements of Article V of the Agreement of August 21, 1954. That issue was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963 to decide disputes involving interpretation or application of certain stated provisions of specified national non-operating employee agreements. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 14):

"FINDINGS: (ART. V) Under date of November 16, 1959, the General Chairman of Clerks addressed a letter to the carrier's Manager of Personnel appealing the decision rendered by Superintendent Harvey with respect to the above claims, stating in part:

'By copy of this letter Mr. Harvey is advised his decision is being appealed per Rule 28.'

The carrier contends that this does not constitute a notification in writing to Superintendent Harvey of the rejection of his decision as required by Section 1(b) of Article V of the August 21, 1954 Agreement.

The National Disputes Committee rules that furnishing Superintendent Harvey copy of the letter appealing his decision complied

with the requirement of Section 1(b) of Article V that the representative of the carrier be timely notified in writing of the rejection of his decision.

DECISION: Furnishing the Superintendent with copy of letter appealing his decision complied with the requirements of Section 1(b) of Article V of the August 21, 1954 Agreement.

This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, NRAB, for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

As a result of an investigation and hearing held September 18, 1959 the Claimant was found guilty on a charge of being absent from his place of work for an extended period of time without permission, and was suspended from service for thirty days — September 26th to October 25, 1959.

The Employees advance three contentions in support of this claim:

1. That the notice to Claimant was insufficient for failure to set out specific charges as required by rule.
2. That the Carrier's decision went to only a part of the charges.
3. That the Carrier official who determined Claimant's guilt and assessed discipline was not present at the hearing, and, therefore, Claimant's appeal rights were denied.

The notice to Claimant read, in pertinent part, as follows:

"Please report to the Shops Meeting Room at 10:00 A. M., D.S.T., Friday, September 18, 1959, for investigation and hearing in connection with your absence from duty without leave from approximately 10:00 P. M., D.S.T., to 11:35 P. M., D.S.T., September 15, 1959, while assigned as No. 2 Janitor, Purchases and Stores Department, Shops, Illinois, and in connection with your failure to properly perform the duties of your position."

The parties agree that the charge of absence from duty was sufficiently precise, but the Employees assert that "failure to properly perform the duties of your position" was so imprecise as to nullify the disciplinary action taken under an application of Rule 26 reading:

"ADVICE OF CAUSE. An employe, charged with an offense, shall be furnished with a letter stating the precise charge at the time charge is made."

Assuming, arguendo, that the quoted language of the notice failed to meet the rule requirement, nevertheless, it cannot be held that this, standing alone, is sufficient grounds for setting aside the discipline imposed. Claimant was not suspended from service for failure to perform his duties; he was found guilty and disciplined solely for "being absent from your place of work for an extended period of time without permission . . ." (Letter September 24, 1959, Superintendent to Claimant.) There is no dispute that that portion of the notice charging Claimant with absence from duty was sufficiently pre-

cise, and so long as the finding of guilt was based entirely on that charge, no sound basis exists for voiding it on the grounds that no finding was made on the other charge.

We find and hold that the notice of the charges was sufficiently precise under Rule 26 and that the assessment of discipline was properly based upon a valid charge.

The complaint that Claimant's appellate rights were prejudiced because the Carrier official who made the finding of guilt and assessed the discipline was not present at the hearing is likewise without merit. There is nothing in Rules 27 and 28, cited and relied on by the Employees, which either expressly or impliedly would require such official to be present at the investigation. Nor is there any showing here that custom and practice on this property required his presence. (Cf. Award 6226.) Accordingly, the Board finds no merit in or rule support for the Employees' contention that Claimant's rights were abrogated or impaired as a result of the procedure followed in this case.

In view of the foregoing, we will not disturb the discipline imposed.

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 17th day of December 1965.