



Award No. 14444
Docket No. CL-15836

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that: (GL-5823):

(a) The Carrier violated the Agreement when, at Huntington, West Virginia, it dismissed Janitor S. R. Nicholas and,

(b) Claimant Nicholas shall be restored to service with seniority, vacation and all other rights unimpaired and compensated for all loss sustained.

OPINION OF BOARD: *There is no serious challenge of the substantive facts. Petitioner argues only the charge against Claimant did not comply with the terms and provisions of Rule 27 of the Agreement which says that "An employe will within a reasonable time prior to the investigation be apprised in writing of the specific charge or charges against him . . ."* (Emphasis ours.)

On January 12, 1965, Carrier advised Claimant in writing as follows:

"Attend investigation in Trainmaster's Office, Room 307, Passenger Station, Huntington, West Virginia, at 9:30 A.M., January 19, 1965. **You are charged with conduct unbecoming an employe while on duty at the Operating Headquarters Building, Huntington, West Virginia, December 25, 1964.**

Arrange for representative and/or witnesses, if desired." (Emphasis ours.)

A charge that Claimant was guilty of "conduct unbecoming an employe," says the Petitioner, is not a "specific charge" required under Rule 27. It is, rather, vague and uncertain. Neither the Claimant nor the representatives of the Petitioner could have known, with any certainty, what Claimant was called upon to answer and what specific charge to defend.

No exception to the charge was taken at the investigation where Claimant was present and was represented by the Division Chairman, the Local Chairman and by a member of the Protective Committee of the Petitioning Organization. It was raised for the first time on February 26, 1965, by the General Chairman in his appeal to the highest designated officer of the Carrier.

It is a well established principle of this Division that sufficiency of notice, timeliness, and adequacy of the charge must be raised at the investigation. Failure to do so constitutes a waiver. In Award 10386 this Division said:

"Although the claimants were not precisely charged as required by Rule 9(b), numerous awards of this Board have held that the claimants waive their objections to this procedural defect by appearing and testifying without making a timely protest."

Claimant freely testified, his representatives had every opportunity to examine and cross-examine all of the witnesses, the investigation was conducted with decorum and Claimant was given every opportunity to enter objections and to present every defense available to him. At the conclusion of the hearing the Union representatives were asked if they were satisfied that it had "been a fair and impartial investigation and conducted in accordance with the agreement rules?" The Division Chairman and the Local Chairman separately gave identical answers, as follows:

"I decline to answer at this time due to the fact that my answer might be prejudiced to Janitor Nicholas and Clerk Shipe in case it is necessary for either of them to make further appeal."

But the Protective Committeeman unequivocally said it was a fair and impartial investigation and that it was conducted in accordance with the rules of the Agreement.

There is no showing that the Claimant or his representatives were unaware of the nature of the charges. On the contrary, there is sufficient evidence in the record that they were well aware and adequately informed of the Claimant's conduct on December 25, 1964 which brought about the charges against him.

The record fails to disclose that the Carrier was arbitrary, capricious or unreasonable in the conduct of the investigation and in dismissing Claimant from service.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1966.