

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

George S. Ives, Referee

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**  
**(Formerly The Order of Railroad Telegraphers)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville and Nashville Railroad (NC&StL District), that:

1. (a) Carrier violated the Agreement between the parties hereto, when on June 20, 1963 it recorded discipline of forty-five (45) days' suspension against the record of Claimant, resulting from alleged violation of operating rules named in notice of charges which it did not hear within prescribed time limits.

(b) Carrier violated the Agreement when it failed to compensate Claimant for service as a witness on June 6 and 10, 1963.

2. (a) Carrier shall now be required under the terms of the Agreement to clear the Claimant's record of the charges and forty-five (45) days' suspension recorded thereon.

(b) Carrier shall be required to compensate Claimant for service and expense allowance to which entitled by Agreement in connection with Carrier's requirement that he appear as witness on June 6 and 10, 1963. Total amount due \$53.04.

**OPINION OF BOARD:** This is a discipline case arising out of two charges filed by the Carrier against the Claimant operator-leverman. In one citation, issued on May 29, 1963, Claimant was charged with responsibility in connection with delay to Passenger Train No. 93 at Stevenson, Alabama, on May 19, 1963. In citation dated June 6, 1963, the Claimant was charged with failure to make prompt and correct report of delay to Passenger Train No. 93 at Stevenson, Alabama, May 19, 1963. Investigation of both charges was conducted on June 6, 1963, and continued on June 10, 1963, the latter citation having been delivered to Claimant immediately prior to the beginning of the investigation.

In the handling of the dispute on the property, there was some contention as to the timeliness of the investigation insofar as the ten-day provision of Section (a), Article 21, is concerned. However, in its submission to the Board, the Petitioner agrees that the investigation, so far as

the citation of May 29, 1963, was concerned, met the time limit requirement of the rule. The Petitioner does contend that the second citation, dated June 6, 1963, and delivered to the Claimant minutes prior to the investigation, violated the provision of Article 21, that: "He will be apprised in writing of the charge or charges against him and will have reasonable opportunity to secure the presence of necessary witnesses and duly accredited representative." We agree with the Petitioner that the rule requires a reasonable time between the notice and the investigation, and that the notice of June 6, 1963, did not meet that requirement. We will, therefore, not consider the charge of June 6, 1963.

As concerns the charge of May 29, 1963, of "responsibility in connection with delay to Passenger Train No. 93, at Stevenson May 19, 1963", the Board has carefully reviewed the evidence presented at the investigation, and while it is clear that there was a delay to the passenger train on the date involved, the evidence, in our opinion, does not place the responsibility for the delay on the Claimant. We find, therefore, that the recorded suspension of forty-five days was not warranted, and that it should be expunged from Claimant's record.

The Board finds and holds that the Claimant was a principal at the investigation and the provisions of Article 13, by the specific language of Section (b) thereof, as revised June 23, 1953, are not applicable. No provision of Article 21, under which the dispute must be decided, supports the claim for pay for attending the investigation or for any alleged expenses in connection therewith. Furthermore, the record is clear that Claimant lost no time attending the investigation, which was conducted at Chattanooga, Tennessee, where Claimant resided, and there is no proof of his having actually incurred the expenses alleged. Parts 1 (b) and 2 (b) of the claim will 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 Employee involved in this dispute are respectively Carrier and Employee 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 violated the Agreement to the extent shown in Opinion.

#### AWARD

Parts 1 (a) and 2 (a) of claim sustained; parts 1 (b) and 2 (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.