



Award No. 17091

Docket No. TD-17826

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

- (a) The Missouri Pacific Railroad Company (hereinafter "the Carrier"), violated the effective Agreement between the parties, Article 8 thereof in particular, by its action in dismissing Train Dispatcher R. W. Hartzell from the Carrier's service, effective January 15, 1967.
- (b) The Carrier shall now be required to reinstate Claimant Hartzell to Carrier's service with all rights unimpaired and compensate him for time lost from January 15, 1967 until the date the individual claimant is restored to the Carrier's service.

OPINION OF THE BOARD: This is a discipline case. Claimant Hartzell was discharged on January 15, 1967, following a hearing on his actions in the issuance of PX No. 9 on December 19, 1966.

Claimant contends that he was deprived of due process because of the language of the notification of the hearing, which read:

"... develop facts and place your responsibility, if any, in connection with issuance of improper PX No. 9, December 19, 1966."

We must find that Rule 8 of the Agreement is not violated by this notice. The Claimant was clearly made aware of the incident in question and testimony at the hearing indicates he and his representatives did prepare for a defense by such acts as testing a telephone in question prior to the hearing. Such awards as 16816 and 16121 have established this point.

Further we do not find it improper that Superintendent Baldwin, though not the hearing officer, dismissed the Claimant.

The Claimant in this case has in fact been reinstated by the Carrier with seniority vacation rights unimpaired but without pay for the period of his dismissal.

Since we can not find that the Claimant was deprived of rights at the hearing, nor that the action of the Carrier was arbitrary, capricious or that it acted in bad faith we can not disturb the discipline imposed and therefore deny the claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Shulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1969.