

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 47, when on April 4, 1969, it suspended Signal Maintainer G. K. Clayton from service prior to his having a fair and impartial investigation.

(b) Carrier violated the Signalmen's Agreement, particularly Rule 47, when it did not afford Signal Maintainer G. K. Clayton a fair and impartial investigation by not informing him of any exact charge or charges, and then amending the so-called charges after the investigation was in progress by alleging that Mr. Clayton had violated Company Rules F, G, 709 and 768, resulting in Division Superintendent Cook's decision being based solely on the allegation that Clayton violated Rules F, G, 709 and 768.

(c) Carrier reinstate G. K. Clayton on the position of Signal Maintainer, Ocala, Florida, with full employment and seniority rights which he enjoyed prior to his suspension and dismissal, and pay him for all loss of wages including all overtime for which he would have been entitled or compensated had he not been suspended and subsequently dismissed.

(d) Carrier pay Mr. G. K. Clayton interest at the rate of seven percent per annum on all monies claimed in Part C above. Interest commencing April 4, 1969, and continuing at said rate until claim is paid or the matter is otherwise disposed of. [Carrier's File: G-2-NO-Clayton, G. K.]

OPINION OF BOARD: An agreement such as detailed in Rule 47, requiring the Carrier to give employees advance notice of the exact charges against them does not always require a notice that satisfies the technical requirements of a criminal complaint. A notice is sufficient if it meets the traditional criteria of reasonably apprising an employee of what set of facts or circumstances are under inquiry so that he will not be surprised and can prepare a defense.

A careful review of this record, the formal investigation transcript and the applicable agreement does not disclose that the Claimant's substantive rights were violated by reason of the notice he received not containing a direct charge that he violated a specific rule. The Claimant was notified that the investigation was to develop the facts and determine responsibility for the accident and the circumstances related thereto.

The action of the Superintendent in holding the Claimant out of service pending investigation is not classified as arbitrary and unjustified in view of all the circumstances. Rule 47 clearly states that "in special cases the employe may be held out of service pending investigation."

The investigation did not deprive the Claimant of his right to due process. While the administration of disciplinary action should not seem haphazard or capricious, it is clear that the imposition of discipline is within managerial discretion. We find no basis for an affirmative award.

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 Employes involved in this dispute are respectively Carrier and Employes 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 25th day of June 1970.