

Award No. 18606
Docket No. CL-18828

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Thomas Rimer, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6805) that:

1. The Carrier violated the Clerks' Agreement when it denied the investigation guaranteed by Rule 26 of the Agreement to Clerk Barnes.
2. Clerk Barnes shall be compensated for time lost, as well as interest payment at the current rate, on the amount of reparations due and his record cleared of the charge, as a result of the violation.

OPINION OF BOARD: The claim as presented is predicated on an alleged violation of Rule 26 "Investigation and Hearing." It is later coupled with an allegation that Rule 25, "Advice of Cause" was violated, charging that the notice of investigation issued to the Claimant was vague and imprecise. The Organization asserts that it is fundamental to a fair and impartial investigation that the accused be "advised definitely as to what he is charged with."

The Rules cited read:

"Rule 25 — Advice of Cause

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

"Rule 26 — Investigation and Hearing

An employe who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation and hearing. He may, however, be held out of service pending such investigation and hearing. The investigation shall be held within seven (7) days after the date when charged with the offense or held from service. The time limit provided in this rule may be extended by mutual agreement."

The Carrier acknowledges that the issue in dispute is simply one of determining whether the notice of charges met the contract requirement (Rule 25) for a "precise charge" in the letter furnished the employee when the charge is made. It is argued that the test which must be met by such letter is whether or not the notice is sufficient to enable the employee to prepare his defense.

The parties thus agree upon the narrow limits of the dispute, and the Board will examine only the notice of charges addressed to the Claimant dated July 29, 1969 which reads:

"July 29, 1969

Mr. J. R. Barnes
Clearing, Illinois

Dear Mr. Barnes:

Please arrange to report to Room 102, General Office Building, at 9:30 A. M. August 1, 1969, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your insubordination between 6:20 P. M. and 6:45 P. M. on July 17, 1969.

If you desire a representative, please arrange.

Yours truly,

(Signed) H. SHEPHERD

cc: Mr. W. Mutzbauer
Mr. C. M. Crawford
Mr. W. Hayes:

Please arrange to attend this investigation as a witness."

The letter charges "insubordination" on a specified date and within a specific time frame. The Organization argues that this is not a "precise charge" as required by Rule 25 and to be "precise" should have included the name of the person to whom he was allegedly insubordinate together with "supporting facts or details alleged."

The Carrier contends that Claimant understood full well the identity of the supervisors to whom he had been insubordinate and asks the rhetorical question, "* * * now many people could a clerk be insubordinate to in twenty-five minutes on a specific date * * *"

There is nothing in the record, including the Claimant's own testimony at the hearing which would indicate that he did not understand the nature of the charges or that he was misled or his defense prejudiced by any insufficiency in the notice issued to him on July 29, 1969.

The term "precise charge" has been defined in numerous awards to mean: "It is sufficient if it appears that the one charged understood he was being investigated for the dereliction of duty set forth in the notice." Award 12898 (Hall). Further, in Award 16344 (Devine), "The Board has held in numerous awards that the purpose of rules such as 9 (a) (requiring a precise charge) is not to create technical loopholes to permit an employee to escape discipline, but to enable him to prepare his defense so that he is not misled, deceived, or taken by surprise."

In reaching a decision in Award 16637, (McGovern) the Board considered a charge of "alleged insubordination" on a specified date issued to an employee in a notice of investigation. Here, too, the Organization argued that the charge was insufficiently precise in the terms used. The Board rejected the claim stating, "* * * (we) find that it possesses those specific element prerequisite to reasonably informing Claimant of the matter against which he is to defend himself." And again in Award 16115 (McGovern), "The charge need not have the degree of specificity normally associated with a criminal indictment."

This Board agrees with the Organization's general statement that, "A fundamental incident to a fair trial and impartial hearing is that the accused shall be advised definitely as to what he is charged with." The awards cited involved procedural deficiencies in discipline cases but they do not support the Organization's position in the fact situation before us here.

In this case we believe that the Claimant was clearly advised of the specific or "precise," charge against him and that it was sufficient for him to prepare his defense. There was no deficiency shown by the Carrier in meeting the requirements of Rule 25, and by the same token there was no violation of Rule 26 as alleged in 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 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 the Contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.