

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19842  
Docket Number MW-19484

Alfred H. Brent, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: {

(The Illinois Central Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The **Agreement** was violated **when** Charles Miller **was summarily** dismissed by Foreman G. F. **Jatho** on September 26, 1969 without benefit of a fair and impartial hearing as required by Rule **25(a)** (System File SLN-93-L-69/Case No. 692 MofW).

(2) **Mr.** Charles Miller be paid at the extra gang laborer's rats of pay for each day he was out of service from September 26, 1969 until December 26, 1969.

OPINION OF BOARD: The Organization contends that the Carrier improperly **discharged** the claimant without a hearing as provided in **Rule 25(a)** . . . "employees shall not be disciplined or dismissed until after a fair and impartial hearing."

The Carrier contends that **even** though the claimant may have been improperly removed from service by the foreman on September 26, 1969, the claimant **was** notified by the proper Carrier Officer on October **8**, 1969 that he **was** suspended from service and that a" investigation would be held on a **charge** of insubordination.

The record in this case clearly indicates that the claimant **was im-**properly held out of service from September 26, 1969 to October 13, 1969, the date of the investigation. There have been many awards which held that a delay in notifying the claimant of a" **investigation** did not vitiate the entire proceedings. (See First Division 13845 Robertson, **15579** Mabry, 16007 **Rader**). In Second Division Award 86360, Referee Bergman **said:** "This Board is capable of **sifting** the chaff **from** the wheat and confining its findings to the relevant testimony. The claimant had ample opportunity to develop facts in his defense."

**When** the facts in this case were brought out at the investigation, they supported the Carrier's contention that there was just cause for discipline.

This Board finds that the claimant is entitled to eight **(8)** hours pay for each day from September 26, 1969 to October 13, 1969, the period that he was improperly out of service pending investigation.

Award Number 19842  
Docket Number MW-19484

Page 2

**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

The Agreement was violated.

A W A R D

Claim (1) is granted as modified.

Claim (2) is granted as modified.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1973.