

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21183
Docket Number SG-21108

Irwin M. **Lieberman**, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Missouri Pacific **Railroad** Company:

(A) The Carrier violated current Signalmen's agreement Rule 700 when Signal Foreman Tucker was disciplined (30 days suspension to **commence** November 26, 1973 and end December 25, 1973, both dates inclusive) without first being given an investigation. **Rule** (700) of the current Signalmen's Agreement states in part and I quote: **(A)** an employee who has been in the service more than sixty (60) days **shall** not be disciplined or dismissed from service without first being given an investigation, end of quote. Mr. Davidson states in his letter that Signal Foreman F. E. Tucker waived the Rule **requiring** a formal investigation and agreed to accept whatever discipline issued. I have a letter from Mr. Tucker that he sent to Local Chairman Denny A. House stating that Mr. L. E. Johnson got him to sign a letter on Nov. 12, 1973 with promise that he would not be taken out of service, would only be ten days (10) probation with no time lost. Mr. Tucker further states in his letter that about 4 p.m. on November 26, 1973 Mr. L. E. Johnson called him and asked Mr. Tucker to meet him between Chester and **Dupo** at which time he, Mr. Johnson, gave him the letter that he had been taken out of service that day for 30 days,

(B) Signal Foreman Tucker be paid at his Signal **Foremans** rate of pay, an amount equal to that-which he would have earned had discipline not been improperly assessed. **/Carrier's file: G 225-649/**

OPINION OF BOARD: Claimant, a Signal Foreman, signed a statement wherein he admitted that he **committed** certain offenses in violation of Carrier's operating rules and waived **formal** investigation. Although there is some dispute about the conversation leading to the signing of this document, the basic facts are otherwise not in **dispute**. Claimant was assessed a thirty day suspension by Carrier; however in the middle of that period he was awarded a disability pension, thus effectively reducing the Claim period to November 26 to **December** 11, 1973.

The sole issue herein is whether Claimant had the right to waive the investigative hearing and as a **corollary did** Carrier have the right to discipline Claimant without a hearing. Rule 700(a) of the Agreement provides that an **employee** shall not be disciplined or dismissed from service without first being given an investigation.

Petitioner argues that Rule 700 is clear and allows for no exceptions; investigations will be held. Further, it is contended that employee have no inherent rights, except via the **Agreement** and can make no individual bargains

with Carrier to abrogate that Agreement. Petitioner cites a series of Awards which provide that individual **employees** cannot enter into separate agreements with Carriers which would in any **manner** abrogate or modify the terms of the applicable Agreement.

Carrier asserts that **Rule 700** guarantees an investigation for the benefit of the **employee** and the **employee** has a right to give up that investigation right when it is apparent that it would be more detrimental than beneficial.

In a directly related case, Award 18468, involving the same Carrier and another Organization, we found that the signing of a waiver was voluntary and did not deprive that Claimant of any rights. We said: "It has thus been long **settled** that an admission of guilt obviates the necessity for a hearing" (see also Award 2339 and Fourth Division Award 983).

The key concept in this dispute is that relating to the purposes of the investigation provided in **Rule 700**. The investigation **is** for the sole purpose of determining whether or not the **employee** is guilty of a charged violation of certain **rules**; thus, as in this case, when the **employee** acknowledges that he has violated the rules, the purpose of the investigation has been fulfilled and there is no need for further pointless and redundant activity. We concur with the *reasoning* expressed in the Awards cited by Petitioner, relating to the impropriety of separate agreements between individual **employees** and Carriers; however these Awards have no application to the issue before us in this dispute. An individual **employee** must remain free to exercise his own judgment with respect to his own guilt or innocence; the Agreement does not abrogate that right.

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.

Award Number 21183
Docket Number SG-21108

Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 13th day of August 1976.

Dissent to Award No. 21183, Docket No. SG-21108

Award No. 21183 has accomplished nothing but to perpetuate the error of the precedent upon which it relies. Relying upon erroneous precedent, it can be no better than the precedent.

Rules such as the present Rule 700 were written to protect employes from their own ignorance as well as from the venom of an employer. In the present case, it will never be known whether or not the Claimant was a victim of either of both perils because the Majority has granted the Respondent Carrier relief from its agreement with the Petitioning Employes.



W. W. Altus, Jr.
Labor Member