

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21805
Docket Number MW-21806

George S. Roukis, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

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

(1) The 'five (5) days overhead suspension' of Trackman
C. W. Sirk was without just and sufficient cause and disproportionate
to the offense with which charged (System File 2-MG-1426).

(2) The Carrier failed to notify the claimant's representative

'of decision, in writing, not later than
twenty (20) days following completion of
hearing' (Agreement Rule 48-s.).

(3) As a consequence of 1 and/or 2 above, the claimant's
record shall be cleared of the charge and he shall be reimbursed for any
monetary loss suffered (Agreement Rule 48-e)."

OPINION OF BOARD: By letter dated March 17, 1975, Claimant Sirk was
informed that he was disciplined by "five (5) days
overhead suspension" as a result of evidence adduced at a hearing held
on February 26, 1975 concerning the charge of "being absent from duty
without permission on Monday, February 3, 1975, and Tuesday, February 4,
1975." Claimant lost no time from his assignment as a result of either
attendance at the hearing or the assessment of the five (5) days overhead
suspension.

On appeal initiated in his behalf by the General Chairman under
date of April 29, 1975 it was first contended that no discipline notice
had been given as required by Rule 48(a). The later contention by
petitioner (letter dated May 6, 1975) was that the local chairman who
represented claimant at the hearing was not given a copy of the discipline
notice as required by Rule 48(a) which provides as follows:

"(a) Except as provided in paragraph (b) hereof, an
employee shall not be disciplined or dismissed without
a fair and impartial hearing. He may, however, be held
out of service, pending such hearing. Not later than

"twenty (20) days from the date alleged violation occurred the employee shall be notified in writing of the precise charge against him, and he shall have reasonable opportunity **to secure** the presence of necessary witnesses and a representative if desired. Such notice shall specify the date, time and place of the hearing which shall be held not earlier than five (5) days nor later than ten (10) days from the date employee is notified. The employee and his representative shall be notified of decision, in writing, not later than twenty (20) days following completion of hearing."

Carrier concedes that it erred in not giving the local chairman a copy of the notice of discipline letter. However, they argue that such inadvertent oversight was not prejudicial to claimant's rights and direct our attention to **precedential** Awards in support of their position.

We believe that the conclusion reached in this regard in **Award** No. 9 of **Public** Law Board No. 1210 (Neutral Member **Roadley**) which involved the same parties as are involved in this dispute is controlling here. In Award No. 9 it was written:

"* * * Carrier maintained that this was an inadvertent oversight and did not adversely affect the status of the matter. On this point Third Division Award 11775, treating with an almost identical allegation, stated, in part:

' . . . We hold to the general view that procedural requirements of the agreement are to be complied with but we are unable to agree that Carrier's failure in this regard, under these circumstances, was a fatal error which justifies setting aside the discipline **ultimately** imposed.'

"The foregoing rationale is appropriate in this instant case. * * *,"

See also Third Division Award Nos. 20423 (Lieberman), 11775 (Hall), 8807 (Bailer), 4781 (Stone).

As to the merits of the case, the record contains substantial evidence, including **claimant's** own admission relative to the February 3rd date, to support the assessment of discipline. Five (5) days overhead (record) **suspension** is neither excessive, arbitrary or capricious. The **claim** must be denied.

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:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1977.