

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21947  
Docket Number SG-22006

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Southern Pacific Transportation Company  
( Texas and Louisiana Lines

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company - (Texas and Louisiana Lines):

On behalf of Signalman L. T. Haag for reinstatement to service without loss of pay and all rights unimpaired.

OPINION OF BOARD: The Carrier wrote to the Claimant May 10, 1976, and advised him that he was charged with failing to protect his assignment since April 23, 1976. He was further advised that an investigation would be held May 17, 1976, at 10:00 a.m. The Claimant denied receiving this letter. He reported for work May 17, 1976, and was advised the investigation was to be held that morning.

At the outset of the hearing, the Claimant was asked, "Mr. Haag do you feel that you have sufficient time to prepare for this , investigation or would you like to postpone it?" He replied, "Yes, I have had enough time. No, I would not like to postpone it."

The hearing proceeded as scheduled May 17, 1976.

On May 24, 1976, the Carrier dismissed the Claimant for failure to protect his assignment since April 23, 1976.

The Claimant presents three issues for review.

First, it is alleged that the Claimant was not advised of the proposed investigation three working days in advance of the hearing. The purpose of this rule is to permit the Claimant to prepare for the investigation. He was given a chance to postpone the hearing but he elected to proceed. It is held that he waived any objection to the three day rule and further that he has not demonstrated that he has been prejudiced by proceeding as agreed on May 17, 1976.

Secondly, Claimant urges that the Carrier had knowledge of the offense for more than 20 days prior to May 17, 1976, and that under Rule 700, charges must be made in writing within 20 calendar days of knowledge of the offense.

In this case, the offense is alleged to have commenced April 23, 1976. The Carrier mailed a letter to the Claimant May 10, 1976, within the 20 days, charging the violation. The Claimant is in error when he attempts to compute the 20 days from the date of the hearing, May 17, 1976.

The Claimant also alleges as a third error that the discipline of discharge is excessive.

L. T. Haag was employed December 5, 1966. He was dismissed January 8, 1976, for installing track batteries improperly. He was reinstated February 8, 1976. He was assessed 30 demerits April 20, 1976, for causing an accident March 31, 1976.

The record in the instant case illustrates that the Claimant was in jail April 23, 1976, and had not returned to work until the day of the investigation May 17, 1976. He did not have authority to be off work, and testified the deputy refused to allow him a phone call so he could advise his employer of his incarceration.

Based on the whole record, the appeal for reinstatement is denied and the discipline of discharge is permitted to stand undisturbed.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.