

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRDDIVISION

Award Number 22047
Docket Number CL-21880

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and
(**Steamship** Clerks, Freight Handlers,
(**Express** and Station **Employees**
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation
(**Former** Pennsylvania-Reading Seashore Lines

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood
(GE8247) that:

(a) The Carrier violated the Rules Agreement, effective January 1, 1945, particularly Article **XXIV**, when C. M. Crelier, **regularly** assigned relief block operator, Brown Tower, rest days, Saturday and Sunday, rate of **pay** \$5.95 per hour, **was** improperly **removed** from service on Friday, July **11, 1975**, given a **completely** unfair trial on July 23, **1975**, and dismissed on July 30, 1975. Following an appeal hearing on August **7, 1975**, Crelier's dismissal was changed by letter dated August **11, 1975**, in **that** he would be restored to service on a leniency basis, provided he passed the physical examination of the Company Medical Examiner.

(b) C. M. Crelier shall now be compensated for all time lost between July **11, 1975** and August 18, **1975**, the first day he would have been available for service, a total of 26 days of lost time.

OPINION OF BOARD: Claimant entered service of Carrier in **1940** and at the time this claim arose was employed as Block Operator, Brown Interlocking Station. The record shows that Claimant was not getting along with fellow **employees** and filed a complaint against a train dispatcher with Rules Examiner **Gorman**. Mr. **Gorman** observed the operation on July 2, 3, **9** and 10, **1975** following which Claimant **was** removed from service and handed a letter dated July **11, 1975** reading as **follows:**

"Notification is hereby given that you will be held out of service beginning **2:17** p.m., Friday, July 11, 1975, Pending trial and decision in connection with:

'Violation of Rule 400 N-11, Current Book of Rules for Conducting Transportation, by reason of insubordinate acts while on duty as Block Operator Brown **Interlocking** Station, Thursday, July 10, 1975, and incidents effecting operation of Brown Interlocking Station during tour of duty July 10, 1975.'

You **will** be advised subsequently the specific charge or charges on which you will be tried." /Emphasis added/

Also, under date of July 11, 1975, Claimant was sent a "Notice of Trial or Investigation" **reading** as follows:

"Violation of Rule 400 N-11, Current Book of Rules for Conducting Transportation, by reason of insubordinate acts while on duty as Block Operator Brown Interlocking Station, Thursday, July 10, 1975, and incidents effecting operation of Drown Interlocking Station during tour of duty July 10, 1975."

At the hearing held on July 23, 1975, Claimant's representative, BRAC Local **Chairman**, John Lieb, objected to going forward with the investigation on the grounds, inter alia that the Notice of Trial and Investigation was violative of Article XXIV (c) which reads in pertinent **part** as follows:

* * *

"Advance Notice of Trial

(c) An **employee** who is accused of an offense and who is directed to report for trial thereof, **will** be given reasonable advance notice in writing of the exact offense for which he is to be tried and the time and place of the trial...."

Specifically **the Organization** objected that the Notice did not specify the exact charges as **promised** in the letter holding Claimant out of service. The hearing proceeded over the objection of the Organization. By undated Notice of Discipline Claimant thereafter was notified of his **dismissal**. The **dismissal, notice** stated that the 'Outline of Offense' **was** as follows:

"Violation of Rule 400 N-11, Current, Book of Rules for Conducting Transportation by reason of insubordinate acts while on duty as Block Operator Brown Interlocking Station, Thursday, July 10, 1975, and incidents effecting **operation** of **Brown** Interlocking Station during tour of duty July 10, 1975."

Subsequently in handling on the property, the dismissal was reduced to a **26-day** suspension in consideration of **Claimant's many** years of service and positive **assurance** as to his future conduct.

Several issues were joined on the property and referenced in **submissions** to our Board but the sole question presented on final appeal was that **regarding** the contractual adequacy of the Notice of Investigation and Trial. [Many cases have held that the technical precision of criminal indictments is not the standard required to be met by a Notice of Investigation and that contractual due process is fulfilled by a Notice which advises the **employee** that he is under investigation **with** such particularity that he has a reasonable opportunity to prepare an informed defense. See Awards 20331, 20428, 21111, 21025, 21020, 20993, and many others. We in no way reject the soundness of the principle espoused in those Awards when we hold in the peculiar facts of this case that the Notice of Investigation was fatally defective.⁷

If read in **isolation**, the Notice might pass the test enunciated in the antecedent awards or at least it would be a close question whether the Notice is prima facie defective under Article XXIV (c). But in the facts of this case the Notice must be read in context with the letter of July 11, 1975 which contained the **exact** words **later found in the Notice** but concluded with **the promise** that "you will be advised subsequently the specific charge or charges **on which** you will be tried." There was no subsequent **advice** to Claimant which added any specificity to the charges. In our judgment, the Organization has made a colorable argument that Claimant relied to his detriment upon Carrier's representation that greater specificity would be provided before the hearing **commenced and that** thereby he was confused and prejudiced in his ability to defend by the Notice which failed to provide the promised specificity. In the particular facts and circumstances of this case, we **must** conclude that Carrier violated Article XXIV (c) and we **shall** sustain the claim for lost time. By so **holding**, we express no views on the merits of the **dispute** and certainly should not be understood to condone any of the actions of Claimant.

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 violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.

