NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22258
THIRD DIVISION Docket Number TD-22168

Louis Yagoda, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Chicago and North Western Transportation Company

STATEMENT OF CLAM: Claim of the American Train Dispatchers Association that:

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier"), violated the Agreement in effect between the parties, Rule 24(a) thereof in particular, by its action in assessing discipline in the form of twenty (20) days and ten (10) days actual suspension as a result of investigations held August 17, 1976.

(b) Carrier shall now rescind the discipline assessed, clear Claimant's employment record of the charges which provided the basis for said action, and to compensate Claimant for wage loss suffered due to Carrier's action.

OPINION OF BOARD: The chronology of the events leading to the disciplinary action here being appealed is as follows:

On August 3, 1976, Claimant was notified by Carrier official to attend a formal investigation on August 4, 1976 at 10:00 a.m. at South Pekin, Illinois, on the following charge:

"Your responsibility for your failure to furnish Train Order No.'114 to Extra 6884 South while employed as Pain Dispatcher at South Pekin on July 29, 1976."

On this same date, Claimant was also instructed to attend a formal investigation at 11:00 a.m., August 4, 1976 on the following charge:

'Your responsiblity for your error in handling of message concerning request for Form Y Train Order for the location of MP 128.3 to MP 136.0 while you were employed as Train Dispatcher, South Pekin, July 29, 1976...."

On the same date (i.e., August 3, 1976) Claimant was issued additional notices advising him that the two investigations which were originally scheduled for August 4th had been postponed and rescheduled for August 17, 1976 (for the same respective hours, 10 a.m. and 11 a.m.). No reaction concerning these changes was transmitted by Claimant or his representatives in the interval between the first and second notices or up to date of investigation.

On August 20, 1976, separate Discipline Notices 85 and 87 were served on Claimant, the former imposing a twenty (20) day suspension on him for alleged failure to furnish train order on July 29, 1976, the other a ten (10) day suspension for alleged error in handling message request for train order on the same date.

Employes raised at outset of investigations and in the instant proceedings the contention that Carrier failed to comply with the mandatory time limits in Rule 24 in *their* holding of the subject investigations. Said Rule states in part that "The investigation shall be held within seven calendar days of the alleged offense or within *seven* calendar days of the date information concerning the alleged offense has reached his supervising officer."

Employes point out that in the instant situation notices were originally issued on August 3, 1976. This clearly denotes awareness by Carrier supervision of the alleged offense by that date. The holding of the hearings on August 17, *1976,* created an interval of fourteen (14) days between the two dates, clearly and decisively in excess of the seven calendar day limit permitted by Rule 24 (a). The fact that this was accomplished by a unilateral decision by Carrier to postpone the hearing from an earlier date (which would have been well within the seven days) does not exonerate Carrier from having violated Rule 24 (a). Employes conclude that on these procedural grounds the penalty should be annulled without reaching the merits of the underlying claim.

Carrier's position is that (a) the investigations were originally scheduled within the required time limits, (b) in keeping with routine practices to assure the presence of all necessary witnesses and gathering of all pertinent material, Carrier initiated a short postponement for such purpose, (c) Claimant was timely notified, (d) no opposition was registered by Claimant or his representatives to said postponements at the

time when they were effectuated, and (e) Claimant was, in no way, prejudiced by the short delay in holding the investigation.

In arriving at its decision on this procedural issue, the Board notes that Rule 24 (a) contains a single exception to the seven calendar day requirement for holding an investigation. Said exception is one which may be invoked only by Claimant and to a limit, of only forty-eight hours beyond scheduled date of trial. It obviously leaves intact the obligations put on Carrier in this Rule to schedule the trial within the stated seven-day period. The statement reads:

> "Dispatcher shall have reasonable opportunity to secure the presence of representatives and/or necessary witnesses. Forty-eight hours will, under ordinary circumstances, be considered reasonable time."

The first obligation of the parties, and of a tribunal which has the duty to judge their fidelity to those words, is compliance with the commitments to which the parties put their signatures . Beyond general assertion by Carrier that it was acting in conformance with customary routine postponements designed to allow the fairest and fullest trial process, there has been no showing that such was the reason or the need here for the postponement nor that there were any circumstances justifiably impeding adherence to the contract rule on this subject. Carrier is mistaken *in* its *contention* that failure of Claimant to protest the postponement when it was instituted made Claimant a party to such deferral. The action was a unilateral one by Carrier and was timely protested at hearings.

The Board declines Carrier's request to examine the merits of the charges on which Carrier acted as a way of determining whether deprivation of this contract rule should be ignored because truth and justice nevertheless allegedly prevailed. The rights embodied in Rule 24 (a) are not dependent on such post hoc facts and should not be judged by them. They are mandatory in themselves. Their violation nullifies the process which has followed, because Rule 24 (a) is a condition precedent for such process.

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 Employes involved in this dispute are respectively Carrier and Employes 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 has been violated.

A W A R D

Claim sustained. Payment shall be made within thirty (30) days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1978.