

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22436
Docket Number CL-22420

Abraham Weiss, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(**Express** and **Station Employees**
PARTIES TO DISPUTE: (**(Elgin,** Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(**GL-8571**) that:

1. The Carrier violated the effective Telegraphers' Agreement when, following an investigation **on** February 24, 1977, it assessed a five (5) day suspension from service against **Operator** L. w. **Young;**

2. The Carrier shall now compensate Mr. Young for all time lost as a result of this **suspension** and shall **clear** his record of **the** charges placed against him.

OPINION OF BOARD: **Claimant,** an operator, was given a **5-day suspension** from service following an investigation **on** the charges that at about **9:30** A.M. he:

"1. Allegedly engaged in the reading of a book, 'The Final Days' while on duty;

"2. Allegedly were quarrelsome and vulgar **in** discussion with Assistant **Trainmaster** J. E. Giles in regard to Item 1 above;

"Allegedly refused to comply with instructions of Assistant **Trainmaster** Giles relative to closing **the reading** set forth **in** Item 1 above."

The investigation was to develop all facts and **determine Claimant's** responsibility regarding the charges relative to Claimant's tour of duty on January 27, 1977.

Following the investigation, Claimant received a letter suspending him **on** the basis that:

"Through testimony at this investigation, it was determined that you were guilty as charged and in violation of Operating Rules 700 and 701.

"For your violation of the aforementioned **rules**, you are hereby suspended from the service of this Carrier for a **period** of five (5) days,"

Petitioner takes the position that Claimant was never charged with violation of **Operating Rules** 700 and 701, citing Carrier's denial letter of March 22, **1977**, which reads in part as follows:

"Your letter also **makes** reference to the fact that L. Young was disciplined for Rules 700 and 701 of the Operating Rules, while he was not charged with having violated these rules. While this is factual, I find no cause for protest. The letter of February 3 clearly sets forth the charges facing Young and is fully in compliance with the controlling agreement."

The relevant Agreement rule, Article 16(b) reads:

"When hearing is to be held, the **employee** under charges shall be given written notice as to the **time** and place thereof, and the charge to be investigated, sufficiently in advance to afford him the opportunity to arrange representation and to secure the presence of necessary witnesses"

Petitioner maintains that Article 16(b) requires that the charge be precise and that the **employee** be advised in advance as to the charge. Petitioner concludes that Claimant was found guilty of violating Rules he was **never** charged with violating and that he was disciplined for violating these rules.

Both parties, as well as the Labor and Carrier members of this Division have either referred to, or furnished **many** prior Awards bearing on the issues they deem relevant to our consideration of this

case. The Awards cited or supplied embrace the **following** broad categories: **The** requirement that "exact" or "precise" charge(s) be filed; **employees** found guilty of violations not specified in the statement of charges; and the notice of charges **need** not **contain** reference to a specific rule or rules allegedly violated by the **employee** charged.

We have carefully reviewed the **numerous** Awards called to our attention. They are, for the most part, distinguishable from **the** situation involved in the instant case in that either no charge was **filed**; or the charge was indefinite or vague in that the notice of investigation failed to specify the precise charge or nature of the complaint or alleged offense; or the charge referred to general company rules without indicating the specific acts or non-actions allegedly in violation of such rules or of specific transgressions under such rules; or that an investigation was to be held to determine cause and place responsibility without apprising the employee of the charge against him in connection with the incident under investigation; or that the employee was found guilty and **disciplined** on the basis of a transgression not originally charged; or charges based on violations containing many separate regulations without reference to a specific regulation; etc.

In the case before us, Claimant was charged with three specific activities: reading a book while on duty; quarrels- and vulgar discussion with a supervisor; and refusal to **comply** with the supervisor's instructions to put the book away.

The discipline letter issued after the investigation found the Claimant guilty as charged (the three charges originally filed) and in violation of Operating **Rules** 700 and 701. Claimant was suspended for 5 days for violation of these cited Operating Rules.

Rule 700 reads:

"Every **employee must** be prompt and firm in the execution of his duty. **But,** at the same time, he **must** be civil and courteous. Civil, courteous, and gentlemanly conduct is **demanded** of all **employees** in their dealings with the public, their subordinates, and each other.

"Boisterous, profane, vulgar or abusive language is **forbidden**. Employees **must** not enter into altercation with any person, no matter what provocation may be given, but will make note of the facts and report to their **immediate** superiors.

"**Employees** who are insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who are careless of the safety of themselves, or others, or who do not have or fail to exercise good judgment will not be retained in the service."

Rule 701 reads as follows:

"Safety must be the first consideration of every **employee**. **Employees must** provide themselves with a copy of the Book of Safety **Rules and must** refrain from unsafe practices, not only as a matter for their **own** safety, but for the safety of others. They **must** be alert and attend strictly to their line of duty during the hours prescribed, and **must** not enter **into** undue conversation or discussion with others so as to detract their own attention **or** the attention of others from their **immediate** line of duty.

"Playing or listening to radios, except railroad radios; reading newspapers, periodicals, or books other than those furnished by the company for their guidance, playing cards or other games by **employees** while on duty is prohibited.

"Radios, other than company radios **must** not be connected up, or carried on cabooses, engines or in telegraph, agent's offices, or yard offices or similar places."

A reading of **Rules** 700 and 701 readily discloses that they clearly embrace the three charges included in Carrier's notice of charges, although they also deal with other conduct and behavior and proscriptions against certain designated activities.

In contrast to other Awards called to our attention in which **employees** were charged with one offense but found guilty and disciplined under a separate **Rule**, in the instant case the discipline letter found Claimant guilty as charged **in** the notice of charges **and in** violation of **Rules** 700 and 701. The three charges listed in the notice of investigation precisely described the nature, parties involved, and date of Claimant's activities to be investigated. They were furnished Claimant in **time** to enable him to prepare his defense. **The** investigation was postponed at the Organization's request. Claimant indicated he was ready to proceed with the investigation. Claimant and his representatives understood the basis of the charges. The notice of the charges was more specific in nature than the rules cited in Carrier's discipline letter, which found him guilty of the charges.

Claimant testified that at the **time** of the **incident**, the Supervisor "asked **me** if I knew **Rule** 701 and I stated 'Yes', I **know** **Rule** 701 and he asked **me** if I would put the book away. And I **asked** him for what reason. We said I was in violation of Rule **701**."

This **statement** by Claimant clearly indicates that he was aware of **Rule** 701 **and** its proscription against reading while on duty. **By** the same token, he was alerted by the Supervisor's question **at** the time of the incident that Rule 701 bore upon the specific charge(s) filed against him.

Claimant was charged with specific acts, explicitly stated. He was notified of the acts and conduct complained of, and the time and place of their occurrence. The wording of the notice of investigation was certainly clear enough so that he could adequately prepare his defense. Claimant was not misled or prejudiced **by the** charges as filed. It is not necessary that a specific rule be set out in the notice.

We would be inclined to sustain the claim if the charge in **the notice** of hearing merely alleged a violation of Rules 700 and 701, without any other specificity. But in the instant case, the charges **were** clear and specific, Claimant was clearly apprised of what he was being tried for; the alleged infractions were explicitly brought to his attention in writing; and he was found guilty as charged.

We construe the reference to Operating Rules 700 and 701 in the letter of discipline as a **logical** follow-up to the colloquy between Claimant and Supervisor concerning Claimant's knowledge of the Rules at the time of the incident. This is not a case in which an **employee** is charged with violation of one rule but found guilty of violating another rule and disciplined for the latter violation. Operating Rules 700 **and** 701 embody the specific charges **included** in the written notice of hearing to Claimant.

The evidence supports the charges. The discipline assessed is not unreasonable. The Agreement was not violated and the claim is accordingly 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

The **Agreement** was not violated.

A W A R D

Claim denied.

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NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

& EST:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.