

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22663
Docket Number SG-22432

William M. Edgett, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
(Burlington Northern Inc.

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern:

On behalf of R. E. Ogden, Signal Maintainer, headquartered at Mandan, North Dakota, for reimbursement of twenty days' pay and removal of suspension from his personal record while serving an unjust, biased and illegal discipline when Carrier violated Rules 54-C and 53-A of the current Signalmen's Agreement." [Carrier's file: SI-20 7/18/77]

OPINION OF BOARD: Claimant has raised two procedural matters and says that Carrier's failure to comply with the Agreement in respect to them requires the Board to sustain the claim.

First Claimant asserts that the notice of investigation did not meet the requirements of Rule 54-C which reads (in pertinent part):

"C. At least five (5) calendar days advance written notice of the investigation outlining specific offense for which the hearing is to be given employee and his appropriate local organization representative***." Emphasis added)

Carrier sent notice to Claimant which read:

"Attend investigation in the trainmaster's office at Mandan, North Dakota at 9:00 AM, MST, March 16, 1977 for the purpose of ascertaining the facts and determining your responsibility in connection with a track motor car being struck by Extra 5633 West at approximately 3200 feet west of Mile Post 17 near Sweet Briar, North Dakota about 10:40 AM on March 8, 1977. Arrange for representative and/or witnesses if desired, in accordance with governing provisions of prevailing schedule rules. "

Two points are raised with respect to the notice. Carrier failed to send a copy to the Organization, as required. However, Claimant arranged for his representative to be present. The representative was fully prepared, did not request additional time in which to prepare and fully and ably represented Claimant's interests. Under the circumstances the absence of written notice must be held harmless to Claimant and the Organization.

Claimant also asserts that the notice did not meet the requirements of stating a specific offense. No doubt the notice would not suffice in a criminal proceeding. However, the Board has held that it does not have to meet that standard. It clearly advised Claimant that he was a party not a witness. It specified the event and pointed out that his responsibility for it would be determined. The notice met the requirements of the rule.

Claimant also takes issue with Carrier's denial of his appeal, stating that it did not give a reason for the declination. Carrier's response is that the letter incorporated the denial at the previous step by reference. On this record, it must be concluded that Carrier's denial was taken-as such.

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 14th day of December 1979.