

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22898
Docket Number **TD-22774**

Joseph A. Sickles, Referee

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

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

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier"), violated the current Agreement (effective July 1, 1976) between the parties, Rule 24 thereof in particular, when the Carrier failed to give Train Dispatcher N. K. Burgess (hereinafter referred to as "the Claimant") an investigation within seven calendar days as provided in the Agreement and when the Carrier disqualified the Claimant as a train dispatcher based on the investigation held on November 7, **1977**. The record, including the transcript, does not support the Carrier's charges and findings and fails to support the discipline assessment made by the Carrier and/or establish guilt on the **part** of the **Claimant**. The imposition of the discipline of disqualification as a train dispatcher was arbitrary, capricious, unwarranted and an abuse of managerial discretion.

(b) The Carrier shall now be required to reinstate the Claimant as a train dispatcher, compensate the Claimant for all losses sustained as a result of this action in accordance with Rule 24(c) and clear the Claimant's personal record of the charges which allegedly provided the basis for said action.

OPINION OF BOARD: **On** October 18, 1977, Claimant was directed to appear for **formal** investigation (on October 21) concerning an October 16 derailment. **On** the **same** date, the **Employee** received another notice (in the same envelope) which postponed the investigation until October 25. On the next following day, the **Claimant** objected to the delay on the ground that her representative was available on October 21, but **not on** October 25. Thereafter, the investigation was postponed until **November** 7, 1977.

Subsequent to the investigation, the **Employee** was disqualified as a Train Dispatcher.

This Board held, in Award 22258, that the rule in question is to be strictly enforced, and the **Employees** here did submit timely objections to the postponement.

There is no question that the seven (7) day time period **commenced** to run **on** October 16, 1977. Thus, it would seem that the issue of a timely hearing **must** rest upon certain conflicting testimony as to whether Carrier was made aware of the identity of the **Employee's** representative **in** this case. Carrier has the burden of proof **in** this regard, and the conflicting testimony would seem to weigh in **Claimant's** favor since she, herself, made early objection to the initial **postponement**. Further postponements after an agreement violation would not operate to rectify the original violation.

The Rule **mandates** that an investigation "... shall be held within seven calendar days ...". Thus, we **cannot** agree with Carrier that it "... merely establishes a guideline ...". Nor do we agree that a unilateral postponement is permissible because the Rule is silent as to postponements. It is not necessary to debate the Awards cited by Carrier as **they** relate to our duty to enforce the **language agreed** to by the parties. Suffice it to say that Award 22258 decided a dispute between these parties, and it controls the facts of this case concerning Rule 24.

Our failure to comment upon the merits of the case should not be considered as an indication of our views concerning that very important matter.

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, 1954;

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.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.