NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22910

THIRD DIVISION Docket Number MW-22959

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The discipline of dismissal assessed B&B Carpenter Robert N. Plum was arbitrary, capricious and without just cause (System File D-14-78/MW-13-78).

(2) B&B Carpenter Robert N. Plum shall be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered, all in accordance with Rule 28."

OPINION OF BOARD: Claimant was employed by the Carrier as a Bridge and Building Carpenter. On March 21, 1978, he was served notice of a formal investigation:

> "Formal investigation will be held in the Superintendent's Conference Room, 901 West 48th Ave., Denver, Colo. at 1:00 PM Monday March 27, 1978, to determine facts and place responsibility, if any, in connection with your alleged failure to comply with the requirements of general notice and rules of the Denver and Rio Grande Western Railroad Co on or about 2:00 AM Friday March 10, 1978 at Oak Creek, Colo.
>
> Your presence as principal at this formal investigation is required with representative if desired.
>
> If you desire any witnesses to appear in your behalf-notify the undersigned promptly.
>
> signed J. A. Greener" (Superintendent)

The investigation was conducted on March 27, 1978, at which the notice to the claimant was read. The claimant was represented by the General Chairman of the Organization. At the beginning of the investigation the following exchange occurred between the hearing officer (Mr. Spurling) and the General Chairman (Mr. Ochoa):

"MR. OCHOA:

Mr. Spurling, before we go on with this, in the notice to attend the investigation I note that he is charged with 'failing to comply with the requirements of General Notice and Rules of the Denver and Rio Grade Western Railroad Company.' That is pretty vague. Is he being charged with failure to comply with all the rules or is there a specific rule that he is being cited with?

"MR. SPURLING:

Mr. Ochoa, the caption of the investigation refers to the General Notice and Rules of the Denver and Rio Grande Western Railroad Company and, if appropriate, all or a portion of the General Notice will be read into the record of the investigation.

"MR. OCHOA:

And, as to the rules, I have been asked by Mr. Plum to represent him and I cannot adequately represent him if I don't know the rules he is being charged with and I feel that in that respect we cannot properly represent him and give him a fair and impartial investigation not knowing the specific rules he is charged with.

"MR. SPURLING:

We will enter your objection."

Later in the investigation, the General Notice and Rules of the Denver and Rio Grande Western Railroad were read into the record by the hearing officer. This document consists of twenty-one paragraphs. Some of the paragraphs cover numerous matters that could be the subject of an investigation in themselves. After the reading of the document, the following conversation was entered into between the General Chairman and the Searing Officer:

"MR. OCHOA:

Is he being charged with a violation of all these rules?

"MR. SPURLING:

Mr. Ochoa, as Chairman of the Investigating Board, I am not at liberty to a-r questions directly. I believe that the caption of the investigation specifies it is being held in connection with Mr. Plum's alleged failure to comply with the requirements of General Notice and Rules of The Denver and Rio Grande Western Railroad Company on or about 2:00 A.M. Friday, March 10, 1978."

Throughout the handling of the dispute on the property the Organization continued its contention that the charge was vague and in its submission to the Board contends that by charging claimant with a violation of all the rules, as it did, the Carrier was "obviously engaged in a 'fishing expedition' for an alleged violation." We note that the letter of dismissal sent to claimant on March 29, 1978, followed the same general language of the notice of investigation, without reference to any specific rule.

While the applicable agreement does not require that the charge be "precise", it does require that the employe be given a "fair and impartial hearing," and it is generally recognized that a "fair and impartial hearing" requires that the accused be informed of the nature of the charge made against him in a form definite enough so that he may adequately prepare a defense. It is the opinion of the Board in our present case that the charge was entirely too broad to meet such requirement. (See Awards 13443, 17592).

We will sustain the claim to the extent outlined in Rule 28(d), based on the charge being vague and indefinite, without passing upon the merits of the dispute.

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 apprwed 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 in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of July 1980.