

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23261
Docket Number CL-23349

Carlton R. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks
Freight Handlers, Express and Station Employees)

PARTIES TO DISPUTE:

[The Atchison, Topeka and Santa Fe Railway Company]

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9013) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Barstow, California, on or about July 21, 1978, when it wrongfully assessed the personal record of Ms. R. S. Montoya with twenty demerits, and

(b) Carrier shall now remove the twenty demerits and any reference to the formal investigation held on July 10, 1978, from the personal record of Ms. R. S. Montoya.

OPINION OF BOARD: Claimant was assessed twenty demerits for failure to report to work and failure to secure permission not to report to work. The hearing, which was the basis for the assessment, was held while the claimant was away from the community on vacation and the claimant did not appear at the hearing.

The Carrier relies upon Rule 24 which requires that the investigation be held not later than twenty days from the date that it had factual knowledge of the occurrence. It attempted to make service at the claimant's home while she was on vacation, but the Carrier's representative was notified that the claimant was out of town in San Francisco. The Carrier further provided notice by certified mail to the address at which the claimant was supposed to have been in San Francisco. The Carrier points out that neither the claimant nor the Organization requested a delay of the hearing.

We find no evidence that the claimant intentionally avoided the service. We do note, however, that the Carrier knew that the claimant was on vacation on the day of the hearing, away from the community where the hearing was to be held, that service would be difficult under those circumstances, and that attending the hearing would be further difficult under those circumstances.

A procedural issue is raised here. Rule 24-R requires that the **employee be apprised in writing of the precise nature of the charges to be investigated.** Although the Carrier made every effort to satisfy this condition, there is no evidence in the record that this was accomplished. -It does not appear that the claimant was avoiding the service. She was simply out of town on vacation which the Carrier's records would show.

Under the **circumstances, we find** that the Carrier satisfied the procedural requirements of the Agreement, when it made every effort to **comply within the time limit** of Rule 24-B.

We do find, however, that there is a duty beyond the specific procedural requirements, in order to have a fair and complete hearing, to make every effort to notify the employee of the charges and afford the employee an opportunity to be present at the investigation.

Under the **circumstances, the conducting of the investigation** when the employee was out of town without at least some effort to secure agreement to a delay from the Organization, had denied the employee a fair and complete hearing.

We limit this decision to the facts in this case and do not intend to establish a precedent with respect to essential witnesses at a hearing or investigation.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.