

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23308
Docket Number SG-23276

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: "Claim of the **General** Committee of the Brotherhood of Railroad Signalmen on the Belt Railway Company of Chicago:

On behalf of M. **Pawlowicz**, Assistant Signalman, appealing a ten day suspension October **26-November 5, 1978**, for alleged continued absenteeism and tardiness." (**Carrier** file: P/R **Pawlowicz**)

OPINION OF BOARD: Claimant, M. **Pawlowicz**, after investigation, was assessed a ten (10) day actual suspension from October 26 to November 5, **1978**, for alleged continued absenteeism and tardiness. On November 2, **1978**, an appeal hearing was requested. **Carrier** denied this request by letter dated November 10, **1978**.

The Organization **contends** that Carrier violated the Agreement by failing to follow the provisions of the Agreement **when** it failed to provide Claimant with a Rule **52** hearing as requested by the General Chairman. In its **view**, that failure requires that this discipline be set aside.

Rule **52(c)** states:

"An employee may appeal from discipline imposed on **him** if he or his duly accredited representative does so in writing to the next higher official of the company within ten (10) calendar days from the date he receives notice of the imposition of such discipline, and if so appealed hearing shall be given within ten (10) calendar days of the date of **the** appeal. When an appeal from discipline is made to the next higher official this appeal shall act as a stay of application of discipline in all cases except **where** the discipline has **been** dismissal. A decision will be rendered within ten (10) calendar days after the **completion** of hearing.*

The **language** of Rule **52(c)** is clear and unambiguous. Its import is unmistakable. It provides for an appeal hearing if requested by the employee or his representative within ten (10) calendar days from the date he receives the notice of the imposition Of **discipline**. Rule **52(c)** further provides that the hearing be held within ten **(10)** days of the request and that the request will act as a stay of discipline in all uses except dismissal.

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Nothing in the language of Rule 52(c) allows Carrier the discretion of whether it wishes to provide such a hearing.

Carrier contended that since the suspension had already started, no practical purposes could have been served by holding the hearings. This contention must be rejected. Stated simply, the interpretation suggested by Carrier is **incorrect**.

In any case, the fact remains that Rule 52(c) requires an appeal hearing to be granted with no exception if requested within the prescribed time limits. **Here**, the appeal hearing was properly requested within the prescribed time limits. Nevertheless, **Carrier** failed to provide the required hearing. When it failed to do so, Carrier **violated** the Agreement. Carrier cannot be excused for its failure to schedule the appeal hearing. Rule 52(c) guarantees the right of an appeal. For this reason, the discipline must be set aside. See Awards 15006, 16030, 16094 and 19666.

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. Paulson
Executive Secretary

Dated at **Chicago**, Illinois, this 29th day of May 1981.

