

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24701
Docket Number **MW-24627**

Ida Klaus, 'Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Missouri-Kansas-Texas Railroad Company

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

(1) The thirty (30) days of suspension imposed upon Section Foreman A. G. Hess for alleged violation of Rules '**L**' and '88' **was** without just and sufficient cause and on the basis of unproven charges (System File **300-206/2579-23**).

(2) Section Foreman A. G. Hess shall now be allowed the benefits prescribed in Agreement Rule 6 of Article 23."

OPINION OF BOARD: This claim concerns a 30-day suspension assessed against the Claimant after formal hearing on charges of causing destruction of a motor car through carelessness or negligence. The accident in contention, occurred on **June** 11, 1980. Notice of the charges and the scheduled hearing was first given to the Claimant by letter dated January 20, 1981. The hearing **was** held on January 28, 1981. **The** Carrier thereafter sustained the charges on its evaluation of the conflicting testimony given by both sides at the hearing.

Both the Organization and the Carrier have relied on the transcript of hearing to support their respective substantive positions before this Board. The Carrier has also made a procedural argument of timeliness. The Board has not considered those positions, as it believes that a preliminary issue of fairness and equity under Article 23 of the Agreement is dispositive of the claim.

Article 23. Rule 1, assures the Claimant, as a covered employee, that he "will not be disciplined or dismissed without first being given a fair and impartial hearing" (Underscoring added). We must conclude on the facts before us that the unexplained delay of seven months between the time of the subject accident and the date of the notice of charges deprived the Claimant of a fair chance to adequately defend himself against the allegations charged.

Article 23 reflects the basic principle, often emphasized by this Board, that fairness and justice require prompt notice to the employee of any disciplinary charges against him. With reasonably early notice, given while the incident is still fresh in the experience of both sides, a good chance exists that the hearing will yield the real facts and permit a fair determination of the truth to be made. This cannot be said of a manifestly belated notice.

When, after the passage of time, no notice of charges is given, the employer's sustained silence may reasonably be perceived by the employee as an indication that the incident has been allowed to pass and no disciplinary action is contemplated. The employee will naturally tend to put the past events out of his mind. If the incident is then revived by an unexpected charge, the employee's ability to prepare and defend his case may be seriously impaired. In short,

fairness requires the employer to make a' reasonably prompt decision as to whether to initiate disciplinary action.

We conclude that the manifestly belated **decision to** issue charges against this Claimant deprived him of the chance for the fair hearing vouchsafed to him by Article 23. The disciplinary action taken against him on the basis of that hearing accordingly must also be deemed improper. The discipline cannot be sustained; and the Claimant shall be paid for the amount of earnings he lost by reason of the 30-day suspension.

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 Rmloyes within the meaning of the Railway Labor Act, as approved June 21, 1934;

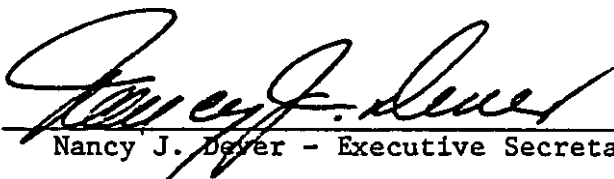
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

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

ATTEST: 
Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March. 1984.