

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25828

Docket Number CL-25742

John E. Cloney, Referee

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

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9865) that:

1. Carrier violated the agreement between the parties when it arbitrarily and injudiciously assessed operator J. H. Dugger record with 60 days Actual suspension without justification.
2. Carrier action was unjust, arbitrary and an abuse of discretion.
3. Carrier shall now be required to expunge the charges, record of investigation and discipline from Clerk Dugger's personal record files and to compensate Mr. Dugger for all wages lost account carrier's action."

OPINION OF BOARD: Claimant Dugger assigned as Manager of the "H" office  
at Palatine, Texas, was notified by letter dated September  
30, 1982 to:

"Report to the Superintendents Conference Room . . .  
for formal investigation to develop the facts and  
place your individual responsibility, if any, in  
connection with your failure to properly perform your  
duties in preparing Order #418 for transfer to 3:00  
P.M. operator . . . on September 29, 1982."

At the hearing conducted on October 11 employee Palmer testified she relieved Claimant on September 29 and signed a Transfer of Orders from him. The material in the transfer included Train Order 418. Palmer testified that later, as she was clearing trains, she found some of the copies of this order were incomplete in that the dates, or the operator's name had been cut off. She identified copies introduced into the record as being the copies she received from Claimant. Palmer contends that although she checked the orders upon signing the transfer she did not check each individual copy. Palmer placed the incomplete orders on a desk behind her and went to make a complete set. Trainmaster C. E. Jones, the Investigating Officer noted this and asked what she was upset about. She explained to him.

Claimant Dugger testified at the hearing that he had not cut off the date, time or signature on any of the copies he made. He stated he checked the copies when he made them and again after he trimmed them with the paper cutter. He testified he had no way of knowing whether the copies introduced at the hearing were the copies he made but if they were they had been tampered with because the copies he turned over were in "good order".

Claimant points out the order in question was actually later cancelled. When this happens copies of the order are thrown away and the original only is retained. He testified he retrieved the copies from the waste basket after receiving Notice of Investigation. There were 12 copies which he described as "far too many".

On October 15 Claimant was notified: " ... your record has this date been assessed with Sixty (60) days Actual Suspension for your violation of Special Instructions of Timetable No. 18: Item 13(12) Rule 209; and Rule 37 and Rule 48 ...."

The Organization contends the charge contained in Notice of Investigation was not specific and Claimant didn't receive the "fair and impartial" investigation required because he didn't know the precise charge against him.

This Board finds the notice of September 30, 1982 was sufficiently specific to inform Claimant as to the purpose of the investigation and what it involved. In point of fact after receipt of the notice Claimant retrieved copies of Order #418 from the waste basket where they had been put when the train was cancelled. We have frequently held "it is not necessary that the Rule . . . be set forth in the notice. The test is whether the notice is sufficient to fairly apprise the Claimant of the nature of the offense charged so that he can adequately defend himself." (Third Division Award 18872) We believe the notice involved here meets this test.

The Organization also argues that factually the Carrier did not establish Claimant had furnished faulty copies to Palmer who was the only witness "against" Claimant. In this connection we note this is really not a case of reliance on the unsubstantiated testimony of one witness as to a certain event. In addition to the testimony of Palmer, the physical evidence of the incomplete orders was introduced at the investigation. There was no evidence to even suggest Palmer or anyone else altered the copies or substituted incomplete copies for those furnished by Claimant. The Carrier obviously believed Palmer's testimony. This is a credibility resolution which this Board, following long established principles, will not disturb.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.