

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26195
Docket Number MW-26232

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Peoria and Pekin Union Railway Company

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

(1) The three (3) days of suspension imposed upon Mr. W. Faichney, III for alleged responsibility in connection with alleged 'serious and expensive damage caused by your failure to keep various nuts and bolts tightened' on the tamping machine was unwarranted, on the basis of unproven charges and in violation of the Agreement (System File PPUT-3888/M-TC-45-83).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant was accused of failure to keep "... various nuts and bolts tightened" on a tamping machine while operating it. This allegedly caused "... serious and expensive damage" to the machine. After an Investigation was held on July 26, 1983, the Claimant was advised on August 3, 1983, that he had been found guilty as charged and he was assessed a three (3) day suspension. The discipline was appealed by the Organization in the normal manner. Absent resolution of the dispute on property this case was docketed before the Third Division of the National Railroad Adjustment Board for final adjudication.

The Organization objects to the discipline on both procedural grounds and on merits. It is the position of the Organization that the Carrier was in violation of Rule 17(a) of the Agreement which reads, in pertinent part, as follows:

"An employee in the service sixty (60) calendar days or more will not be disciplined or dismissed without first being given a fair and impartial hearing before an officer superior in rank to the officer preferring charges ..."

A review of the record shows that the Carrier Officer preferring charges by notice dated July 12, 1983, was Chief Engineer E. J. Dean. The Transcript of Investigation shows that the Hearing Officer was the same Chief Engineer. The Board notes that the discipline was also assessed by the same Chief Engineer. The Vice Chairman of the Organization correctly points out this procedural violation of Rule 17(a) in the first level of appeal. An analysis of the Transcript also shows evidence of leading questions by the Hearing Officer

which provides further grounds for concluding that a Rule 17 violation was committed by the Carrier during the conduct of the Hearing itself. Various Divisions of the National Railroad Adjustment Board have precedentially ruled that such procedural errors are sufficient grounds for sustaining claims (see Second Division Awards 6795, 8468; Third Division Award 20014; Fourth Division Awards 1204, 2684). Such also serves as bar to further consideration of the merits of the instant case.

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:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 24th day of November 1986.