

The Third Division consisted of the **regular** members and in addition Referee Elmer F. **Thias** when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of **Way** Employees
(**Houston** Belt & Terminal Railway Company

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

(1) The fifteen (15) days of suspension imposed upon Section Laborer J. Young for alleged failure to protect his assignment on January 3, 1985 **was** arbitrary, capricious, unwarranted and without just and sufficient cause.

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employe** or employees involved in this dispute are respectively carrier and **employees** within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant had been employed by the Carrier for a period of seven years and **was** assigned to a position of Section Laborer. He was absent **from** duty on January 3, 1985. He telephoned his headquarters and spoke to the Superintendent, indicating he could not get his car started but as **soon** as he did, he would come on in. Subsequently, the Carrier held a formal **Investigation** on January 25, 1985, **with** the Claimant charged as follows:

"...responsibility, if any, in connection with the report that you allegedly failed to protect your assignment on January 3, 1985, in violation of Maintenance of **Way** Bulletin No. 25."

Following the Investigation, the Claimant **was** assessed a fifteen **day** actual suspension. The Organization contested this discipline, taking appropriate appeals on the property and to this Board. Accordingly, the dispute **is** properly before **us**.

The Claimant was present at the formal Investigation and he ~~was~~ represented by a Representative of the Organization. When the Conducting Officer opened the Investigation, he inquired whether the Claimant had received proper notice to report for the Investigation. The Claimant responded in the negative and several additional questions were asked and answered regarding notice which the Claimant insisted he had not received. Subsequently, the Claimant's Representative made objection to the notification on the charges.

In its handling on the property and its appeal to the Board, the Organization takes the position that the Claimant was not notified as required by Rule 12 (A) of the ~~Parties~~' Agreement, reading in pertinent part as follows:

"Prior to the hearing the ~~employe~~ will be notified in writing the specific charge against him, after which he will be allowed reasonable time for the purpose of having witnesses and such representatives of his choice present at the hearing."

In Third Division Award 26719 we decided a similar dispute between the same parties ~~in~~ a disputed matter of notification. There is no significant difference in the particulars of the record in this dispute and those ~~in~~ Award 26719. The evidence is not sufficient to substantiate ~~the~~ Carrier's position on the issue of notification. Consequently, the discipline imposed upon the Claimant is vacated.

A W A R D

Claim sustained.

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

Attest: 
Nancy J. ~~Dever~~ - Executive Secretary

Dated at Chicago, Illinois this 15th day of January 1988.