

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Soo Line Railroad Company

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

(1) The discipline imposed upon B&B Truck Driver J. L. Ralston was without just and sufficient cause and in violation of the Agreement (System File R325 #1642R/800-16-A-81).

(2) The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage and benefit 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 employes involved in this dispute are respectively carrier and employes 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.

There are two basic issues in this dispute. Firstly, was there a procedural default when Carrier failed to include in the Notice of Discipline, dated September 2, 1986, a statement advising Claimant that he had a right to a Hearing? Secondly, was this default mitigated, when the Organization's General Chairman requested a Hearing via letter dated October 1, 1986? For ready reference, Agreement Rule 13, which is pertinent hereto is referenced as follows:

"6. (a) An employee who has been in the service 60 days or more, and whose application has been approved, if disciplined or dismissed will be advised of the cause for such action in writing, and also advised of his right to a hearing.

(b) An employee disciplined or dismissed shall have a fair and impartial hearing, provided that a written request is presented to the Roadmaster or Regional Engineer within 10 days after date of advice of discipline. Hearing shall be granted within 10 days thereafter, and decision will be rendered within 10 days after date of hearing."

In the case at bar, Claimant was assessed a discipline of ten (10) working days suspension. He was not, however, advised of his right to a Hearing. The General Chairman did not request a Hearing until October 1, 1986, well beyond the ten (10) days Hearing request period. By letter dated October 15, 1986, Carrier's Regional Engineer for the Western Region pointedly denied the General Chairman's request. He did so on the grounds that the request exceeded the time limits set forth in Rule 13-6(b). In response, the General Chairman filed a grievance on October 28, 1986, charging that Carrier violated Rule 13-6(a). There was no response to this Claim until January 7, 1987, when Carrier denied the Claim. As part of its response, Carrier acknowledged that Rule 13-6(a) was not observed, but added that such omission was merely a "minor oversight." By letter dated February 25, 1987, the General Chairman criticized the content and tone of the January 7, 1987, letter and, subsequently, by letter dated March 26, 1987, Claimant was apprised that a Hearing would be held on April 9, 1987. A Hearing was held on April 9, 1987, and predicated upon the Investigative record, Carrier upheld the discipline assessed. In effect, Carrier concluded that Claimant was absent without permission during the period August 25, 1986, through August 28, 1986. Prior to August 25, 1986, Claimant was on leave of absence and a participant in the Employee Assistance Program.

In considering this case, particularly, the detailed comprehensive briefs submitted by both sides, the Board, of necessity, must conclude that a procedural violation occurred when Carrier failed to apprise Claimant of his right to a Hearing. It was not mitigated by the absence of a timely request pursuant to Rule 13-6(b). Even Carrier recognized a procedural flaw, when it characterized the omission a "minor oversight." However, Rule 13-6(a) contains unambiguous specific language and mandates that the affected disciplined employee will be advised of his right to a Hearing. It is not discretionary language and requires that the employee be so advised. Also, the language does not say that the General Chairman will be advised of this right, although it would be normative procedure to inform said official of the disciplinary action.

In the case herein, the Board is impelled to note that the General Chairman was evidently not sent a copy of the September 2, 1986, disciplinary letter, since his name was not on a list of names designated to receive a copy of said letter. Consequently, it could be plausibly argued that a request for a Hearing from the General Chairman could not be submitted within ten (10) days after date of advice of discipline. As an appellate body, this Board is empowered to interpret and apply contested contract language, and thus consistent with our judicial responsibility, we must give literal effect to the Agreement language crafted by the parties. We cannot interpolate expansive Interpretations. For these reasons, we must sustain the Claim.

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Award No. 28205  
Docket No. MW-28339  
89-3-88-3-83

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.