

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30791  
Docket No. TD-31155  
95-3-93-3-147

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(  
(Southern Pacific Lines

STATEMENT OF CLAIM:

"Pursuant to Article 8 Section 8(g) of the current agreement between the American Train Dispatchers Association and the Southern Pacific Transportation Co., a formal hearing is hereby requested by this Organization on the behalf of it's members, specifically those listed herein to determine the facts and place responsibility for the unjust and unreasonable treatment of Train Dispatchers working in the Roseville Train Dispatchers office on the Western Region by management of the Southern Pacific.

. . .

The Train Dispatchers listed here wish to be directly involved in this Hearing and we reserve the right to add to this list as well as call such witnesses as needed to obtain the facts. The specific employees filing complaint are:

R. W. Ford	A. J. Johnson
K. M. Sime	K. G. McKelvey
A. A. Gerard	J. G. Costello
K. S. Williams	W. S. Gosse
D. J. Gable	K. E. Gosse
K. P. Sullivan	L. V. Gale

Please indicate the time and place of this Hearing directly to myself and it is hereby requested that this Hearing be conducted by an officer at a level of Assistant Vice President or higher as to the fact that the Regional Management is responsible for this treatment up to the General Manager level."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 dispute involved in this case concerns an alleged violation by Carrier of the provisions of Article 8(g) of the negotiated rules agreement. Article 8(g) reads as follows:

"ARTICLE 8

\* \* \*

Section (g). Unjust Treatment. A train dispatcher who considers himself otherwise unjustly treated shall have the same right of hearing and appeal as provided in this article, if written request is made to his Superintendent within thirty (30) days from cause of complaint."

The genesis of this dispute is found in a letter dated November 14, 1991, from the Organization to Carrier's Superintendent in which a formal hearing was requested on behalf of the individuals named in the STATEMENT OF CLAIM supra. The Organization's letter stated, in part, as follows:

"The Southern Pacific Transportation Co. has engaged in the process of harassment and intimidation of the Train Dispatchers in this office by means of interrogations while on duty and systematic pressure to attend instructional classes on behavior with the clerical employee in attendance who is the source of the problems."

The letter contained no indication or identification relative to when the alleged action had occurred or who allegedly performed the alleged "harassment and intimidation."

When, on November 25, 1991, Carrier denied the Organization's request for a hearing for the named individuals, they challenged the lack of particulars in the original complaint. However, Carrier continued their response by expressing assumptions relative to the basis of the request for the hearing and proceeded to defend Carrier's actions in connection with the "assumed" basis for the hearing request.

The Organization, on December 12, 1991, replied as follows:

"If it is more specifics you need to motivate you to comply with the agreement provisions, consider the fact that between 1130 pm November 11, 1991 and 700 am November 13, 1991, Southern Pacific plain clothes policemen interrogated over 25 people in this office under a cloud of innuendo with absolutely no specific idea of what they were looking for. With the knowledge that the S.P. will discharge people on hearsay accusations, many of the people of this office were made to work under extremely stressful conditions unnecessarily. The S.P. Police incompetently pursued an inconsistent line of questioning while totally ignoring their obligation to validate the complaint at the source. Had they done so, the fact that the report was manufactured and filed by an individual that is known to be unstable and at the least lacking in honesty. This individual is waging what only can be described as occupational terrorism within this office."

When no reply was forthcoming from Carrier to the December 12th communication, the Organization on January 21, 1992, pursued an appeal of the grievance to Carrier's highest appeals officer who rejected the hearing request on the basis that the request had no support in the rules agreement. Subsequently, an on-property conference was held to discuss this dispute with no change in the positions of the respective parties. The case is, therefore, properly before this Board for final adjudication.

Both on the property and before this Board, Carrier has argued that the grievance as presented was vague, indefinite, lacking in specificity and failed to present a case on which relief could be granted. In the initial grievance presentation, these charges were, in fact, correct. However, Carrier then acknowledged that they knew exactly what the specifics of the grievance were and both invited and participated in an on-going discussion relative to the who, what and where of the grievance.

The Board cannot accept as serious Carrier's continued contention relative to their failure to know what formed the basis of the request for the hearing.

The issue of unjust treatment hearings has been examined by this Board with consistent results. To be sure, the great majority of the precedential decisions which have been cited in this case involved situations in which there was a clearly identifiable "course of complaint" which was clearly stated by the Organization when requesting the unjust treatment hearing. Here, as previously noted, the "cause of complaint," while not initially stated by the Organization as clearly as it could have been, was, nonetheless, acknowledged to have been known by Carrier and was clearly defined by both parties during the ensuing on-property handling.

The Board is impressed in this instance with the opinion expressed in Third Division Award 26226 in which it was stated:

"The fact that the Carrier made a unilateral investigation and determination of what it viewed to be the merits of the accusation, is essentially irrelevant."

In this case too, the Board finds no fault with Carrier's actions relative to their investigations and determinations relative to the situation with which they were presented in November of 1991. Those investigations and determinations, however, do not negate the right of the Organization to a properly requested hearing made in accordance with the clear language of the agreement rule. To repeat the Board's opinion as expressed in Third Division Award 24469:

"It ill serves the arbitral process when one of the parties continually seeks to reverse consistently held judicial determinations."

In this case, a hearing was timely requested and should have been held. The Board has misgivings, however, relative to ordering that a hearing should now be held. Because of the very personal nature of the events which were involved at the time, because of the considerable time lapse which has taken place, because of the Board's inability to know whether or not the personal and onerous situation has by now been resolved, and with the belief that both the Organization and the Carrier have exercised good-faith efforts to rectify the potentially troublesome situation which prompted the request for the hearing, it is the Board's considered opinion that the proper disposition of this particular case is found in the Board's determination that, on the basis of the information contained in this case

file, an unjust treatment hearing should have been granted when it was timely requested.

AWARD

Claim sustained in accordance with the Findings.

ORDER

The Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.