

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30866  
Docket No. MW-31050  
95-3-92-3-908

The Third Division consisted of the regular members and in addition Referee Dennis E. Minni 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 three (3) day suspensions imposed upon Messrs. S.C. Wells and S.L. Hunt on July 24, 1991 was in violation of the Agreement (System Files R669/8-00073 and R670/8-00072)
- (2) As a consequence of the violations referred to in Part (1) above, Messrs. S.C. Wells and S.L. Hunt shall each be compensated for all wage loss suffered with vacation, fringe benefits and other rights unimpaired."

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 on 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.

Claimants hold seniority in the Carrier's Track Sub-department and on July 24, 1991 were working on a Tie-Gang with Crew No. T-10 supervised by and Extra Gang Foreman. They were verbally suspended for three days on said date by said Foreman with divergent views as to whether or not the suspensions were reduced to writing and issued to the Claimants within 60 days as required per Rule 20(a).

The Organization stresses the strict nature of contractual time limits and the many Awards upholding this concept. "Shall" is mandatory language for the written notice and the proof offered to show the Claimants received written notices is third-hand and suspect as to its legibility. This denied them a fair and impartial hearing.

The Carrier points out that the Claimants were given forms for a second absence or tardiness, signed by the same Foreman. Also, the Organization's letter appealing this matter, dated October 31, 1991 was beyond 60 days in time and thus time-barred per Rule 21. Subsequently the Carrier raised Rule 20 (B)'s requirement for request of a hearing within ten days of an advice of discipline as an additional bar to these claims.

The Board has evaluated the relative positions and supporting cases offered by the parties in light of the record made upon the property and the Agreement itself. We conclude that written notice is an inimitable right of employees attempting to have meaningful access to the grievance system. This is due to the needs of the employee's representatives who must respond, give advice and present any resulting grievances. If third party evidence that the discipline was issued in writing is all that can be offered to offset the Claimants' allegation of non-service of same, it cannot counter the weight of the record on this point.

It is true that the Claimants knew of their discipline by virtue of serving their respective suspensions but the compulsory writing rule is for the benefit of the representatives of the employees as stated above. The Organization officers need to know what the specific charges and reasons therefore are in order to carry out their statutory representative function. Imposing additional penalty on these Claimants by means of the ten day rule for alleging mistreatment is inappropriate because absent the initial written reason for the suspensions within sixty days forecloses any duty to grieve sooner than that. There was no waiver of rights and the claims are timely filed.

Claimants shall receive back pay for the suspensions served at the rate of pay then in effect and be otherwise made whole as prayed for.

#### AWARD

Claim sustained.

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O R D E R

This 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 10th day of May 1995.