

Award No. 2380

Docket No. TE-2322

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad Company that because the Carrier violated Rule 10 of the Telegraphers' Agreement by disciplining Towerman F. Pierson before conducting a fair hearing as provided for by the first paragraph of said rule, the discipline assessed shall be expunged from this employe's personal record.

OPINION OF BOARD: Rule 10 (a) of the Agreement provides:

"No employe shall be disciplined without a fair hearing by a designated officer of the Company. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, he is entitled to be apprized of the precise charge against him. He shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by representatives of his choosing. . . ."

For reasons too obvious to require discussion, we think it clear that the conversation between Trainmaster Black and Towerman Pierson did not constitute a hearing within the meaning of Rule 10. The Carrier by its letter of December 9, 1941, recognized that Pierson had not had a hearing as contemplated by the rule. Under this rule there is no obligation upon the employe to request a hearing, the obligation is upon the Carrier to provide a hearing before imposing discipline. The record will not support a finding that Pierson waived his right to a hearing under the Rule.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the employes involved in this dispute are respectively carrier and employes 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 discipline imposed was in violation of Rule 10.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of November, 1943.