Award No. 2613
Docket No. DC-2587

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SEABOARD AIR LINE RAILWAY

STATEMENT OF CLAIM: Claim of Dining Car Steward F. E. Maiken that he be reinstated with seniority unimpaired and that he be paid for all time lost since April 29, 1943, on which date he was removed from service for alleged irregularities in connection with his duties as dining car steward.

OPINION OF BOARD: On April 9, 1943, the claimant was notified that a hearing as to his conduct, subsequently shown to relate to transactions occurring between December 19, 1942 and March 31, 1943, would be held on April 15. At claimant's request, the inquiry was advanced to April 14, and completed on the 15th. Pending a decision, the claimant was relieved from service on April 27. On June 8 claimant was ordered to report for further hearing on the 16th, and following that hearing he was on June 22, 1943, dismissed from service.

We shall first take up the procedural aspects of the case. Article 9 of the Agreement effective April 30, 1940, quoted above, provides among other things, that a steward who has been in service more than nine (9) months will, in cases involving discipline or dismissal, be given a hearing within 10 days after the occurrence of the alleged rule violation, if practicable, and that a claim or grievance not presented within 60 days will not be recognized by either party to the Agreement; that a steward may hear the evidence presented against him; that he shall be notified within 10 days of the action taken by the Railway; and that should the charges against him be unfounded, he will be paid full wages for time lost. Claimant entered the service of Respondent on December 1, 1934, and he is, therefore, entitled to the protection afforded by said Article 9.

The Employes contend: (1) that all acts of irregularity charged against the claimant which occurred prior to February 12, 1942, are barred by the 60-day provision of Article 9; (2) that the initial hearing of April 14 and 15, 1942, was held more than three months after the first, and fourteen days after the last alleged act of irregularity, and that the carrier has failed to show that it was not "practicable" to hold said hearing within 10 days; (3) that the carrier violated the other limitation imposed by said Article, by failing to notify the claimant of its action within 10 days after the hearing of April 14 and 15, 1942; (4) that said rule was violated when the carrier, subsequent to the first hearing, suspended the claimant from service without rendering a decision; and (5) that the claimant was denied the right to "hear the evidence presented against him," when the carrier produced a number of unsworn statements at the hearing, which statements were obtained by its representatives without the presence of the claimant and without notice to him.

In our judgment the proposition last stated is decisive of this case. The evidence therein referred to consisted of the unsworn statements of some fourteen persons. Six of said persons signed said statements on April 9, 1943—five days before the first hearing—but no reason is disclosed as to why the claimant or his organization was not accorded the privilege of being present when these statements were obtained by the carrier's agents. It will not suffice to say that the terms of the Agreement were met when the claimant heard the statements read at the hearing. While administrative agencies, such as this, are not bound by the strict rules of judicial procedure it is, nevertheless, essential that they observe the fundamental requirements of due process. These include the right to be advised of the nature of the charge and an opportunity to confront the witnesses. For an enlightening discussion of this subject see Award 1989, Shaw, Referee. Other awards of like tenor are Nos. 775, 1090, 1992 and 2162. We do not go so far as to say that it was incumbent upon the carrier to have the witnesses personally present at the hearing, or that formal depositions were necessary. What we do say is that the Agreement, expressing, as it does, the spirit of the law of the land, requires that one charged with misconduct shall be afforded a reasonable opportunity to meet his accusers face to face. Without the written statements relied upon by the carrier, its case would probably have failed for lack of proof, and yet these omit many details that might have been favorable to the claimant had the facts been fully and exhaustively developed. This situation might have been avoided had the carrier given the organization advance information as to the names and addresses of its proposed witnesses or designated the time when and the place where their statements would be taken. In passing upon a like situation this Board, speaking through Garrison, Referee, said in Award 891: "As to the propriety of the hearing, fair procedure required a disclosure of the address of Mr. Norman (whose written statement was produced at the hearing by the carrier) in order that the employes might have an opportunity to communicate with him and inquire into the statement contained in his letter."

In view of the conclusion already reached any discussion of the other propositions presented by the record would be dicta.

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 carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1944.