

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
FLORIDA EAST COAST RAILWAY COMPANY

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

(1) That the Carrier violated the agreement by disciplining Foreman E. H. Griner on May 11, 1948, without fair and impartial hearing as provided in Rule 11;

(2) That the thirty demerits improperly assessed on the service record of Foreman E. H. Griner be removed, and that he be so notified by the Carrier in writing.

OPINION OF BOARD: The Brotherhood contends that the Carrier violated its Agreement with them by disciplining Foreman E. H. Griner without a fair and impartial hearing, as provided for by Rule 11 thereof, and asks that the thirty demerits assessed against him on his record be removed.

The record discloses that on April 19, 1948 Carrier's Extra Train, 801 North, was delayed at East Mims, Florida. The cause of the delay was the fact that a bolt had dropped out of the switch point of the north switch to the siding at East Mims, causing a positive block to display a red indication. Griner is the Foreman of Section No. 18, which includes this siding at East Mims.

On April 30, 1948, as a result of the incident, the Roadmaster notified Griner to report at his office at 10:00 A. M. on Tuesday, May 4, 1948 for a formal investigation to develop the facts and place responsibility in connection with the bolt dropping out of the switch point. This investigation was had on that date and on May 11, 1948 the Roadmaster, by letter, notified Griner that because of his failure to properly maintain the bolts in this switch point his service record had been assessed with thirty demerits. On May 18, 1948 the General Chairman of the Brotherhood wrote the Roadmaster advising he could not agree with his conclusions and asked him to give the matter further consideration. To this letter the Roadmaster replied on May 31, 1948 that he declined the General Chairman's request and advised that the thirty demerits assessed against Griner's record would not be removed. Thereupon, on June 3, 1948, the General Chairman advised the Roadmaster he was appealing the matter to the Superintendent and, on the same day, notified the Superintendent of that fact.

On this record Carrier contends that the appeal from the decision of the Roadmaster was not taken within the ten day period as provided by Rule 11 (d) of the parties' effective agreement.

Rule 11 (d) provides as follows:

"If an employe considers himself unjustly disciplined, or is dissatisfied with the decision referred to in Paragraph (a) of this rule, he has the right to appeal in succession up to and including the highest official designated by the Management to handle such cases provided written notice of appeal is given the official rendering the decision appealed from, within ten (10) calendar days from the date of the issuance of the decision. This appeal may be made by himself or his duly accredited representative and shall be governed by the provisions of Rule 12. If no such an appeal is made within that time the case will be considered closed and thereafter barred."

Rules limiting the time within which action must be taken or rights will be cut off are desirable, in order to expedite procedure and prevent unnecessary delay, but they are not intended to prevent full negotiation of the matter on the property while the parties are seeking a settlement thereof and until such negotiations, or attempts to further negotiate made within the time so limited, have finally terminated and resulted in a final decision the limitation on the time within which an appeal must be taken does not commence to run. In this case that was on May 31, 1948.

The notice of the Roadmaster that was served on Griner, dated April 30, 1948, is, as far as here material, as follows:

"Report to my office 10:00 A.M., Tuesday, May 4, for formal investigation, to develop the facts and place responsibility in connection with the bolt dropping out of the switch point to the north switch to the siding at East Mims, causing a positive block to display red indication, stopping and delaying Extra 801, North, April 19."

Rule 11 (a) of the parties' effective Agreement, as far as here material, provides:

"The hearing will be held within ten (10) calendar days of the date the employe is charged with the offense or held out of service."

There is nothing in the letter of the Roadmaster to Griner, dated April 30, 1948, that charges Griner with an "offense." If, as a result of the investigation it is determined that someone was responsible for the incident by neglect of duty he should be specifically charged therewith. It is clearly the intent of Rule 11 (a), and particularly that part quoted, that an employe be given notice of the specific offense with which the Carrier seeks to charge him before he can be tried therefor. If the Carrier finds it necessary to have an investigation to develop the facts before such a charge can be made notice of such hearing does not meet the requirements of this rule. If facts are developed at such investigation sufficient to justify charging some employe with an offense the specific charges thereof must then be made against him.

We have come to the conclusion that Carrier has never specifically charged Griner with an offense as contemplated by Rule 11 (a), and, in the absence thereof, he cannot be disciplined as such charge is a prerequisite to the Carrier's authority to do so.

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 has violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1949.