Award No. 6590
Docket No. MW-6535

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when it failed to afford Foreman C. H. Voss a hearing subsequent to the date he was suspended from service on the basis of the results of an investigation which was held at Hutchinson, Kansas, on May 14, 1951, for the purpose of developing facts and determining responsibility, if any, in connection with the failure to patrol track after a heavy rain on May 9, 1951;

(2) Foreman C. H. Voss be reimbursed for all wages lost during the period he was improperly suspended from service without benefit of a hearing as required by Rule 17 of the effective agreement.

EMPLOYES' STATEMENT OF FACTS: Mr. C. H. Voss is Foreman of a so-called Mobile Maintenance Gang and are assigned to work over any of the respective section territories under the jurisdiction of Roadmaster H. W. Deakin, which extends from Pratt, Kansas to Herington, Kansas, a distance of 126 miles.

Foremen of so-called Mobile Maintenance Gangs are not responsible for any specific territory, but are assigned to assist and/or augment different section forces under the jurisdiction of one Roadmaster in accordance with the requirements of the service.

Mr. G. E. Poulton is a section foreman working under the jurisdiction and supervision of Roadmaster H. W. Deakin, and is assigned to Section No. 38 with headquarters at Hutchinson, Kansas. His designated territory extends from Mile Post 232 to Mile Post 247, a distance of 15 miles.

Mr. P. P. Poulton is a section laborer assigned to Section No. 38, under the supervision of Foreman G. E. Poulton.

On May 9 1951, Mobile Maintenance Gang Foreman Voss, Foreman G. E. Poulton and Section Laborer P. P. Poulton were all working on the territory designated as Section No. 38. Each was respectively in charge of a gang of men at different locations on Section No. 38.

he may be represented by one or more representatives of his own choice. He may, however, be suspended pending such hearing when charged with the offense, or suspended from service. A decision will be rendered within ten (10) days after the completion of the hearing."

Mr. Voss, in the investigation, Question 53, acknowledged proper receipt of notice to appear for the investigation and, by that notice, knew the charge for which he was to defend himself, Questions 51 and 52, and in Question 81, when asked if there was any additional information he cared to give regarding the case or if he had anything further to say, answered:

"This has certainly been a lesson to me, and in the future if given the opportunity I will patrol track in case of rain on or near the railway."

and in Question 82, he testified the investigation was conducted in a fair and impartial manner.

We submit that the claimant was on proper notice as to what the investigation or hearing of May 14, 1951 was for.

Rule 17 has been a part of the Maintenance of Way Agreement since at least 1920. It has been applied in numerous investigations since that time just as it was applied in the investigation accorded Mr. Voss. No protest or allegation has ever been made by the Organization, until recently, that the Carrier was allegedly, in their opinion, violating such rule. Since 1920 the agreement has been revised in other respects—in 1922, 1927, 1936, and 1938—but except for number of days limitation, the same Rule 17 has been carried forward into each succeeding agreement and it was, therefore, carried into such agreements with the same meaning which it had in the previous agreements.

We submit that Mr. Voss was granted a proper hearing or investigation under Rule 17 on May 14, 1951. To have given him another investigation or hearing, as contended now by the Organization, would bring forth from them a charge of placing an employe in double jeopardy.

The claim is without merit and should be declined.

It is hereby affirmed that all data herein contained is known to the employes' representative and is hereby made a part of this dispute.

(Exhibits not Reproduced.)

OPINION OF BOARD: The guilt or innocence of Claimant relative to failure of duty is not the question presented for our consideration in this case. The sole question for our consideration here is the application of Rule 17 of the Agreement as the same provides for a fair hearing for an employe before disciplinary action is taken by Carrier.

Rule 17 provides in part:

"He may, however, be suspended pending such hearing which will be held within a period of twenty (20) days from date when charged with the offense, or suspended from service."

It is contended by Petitioners that Claimant Voss was disciplined in violation of Rule 17 in that (1) He was not given the benefit of a hearing, and (2) That he was not charged with an offense.

The facts, in brief, leading up to this controversy, relate to a situation when a heavy rainstorm had affected the roadbed of Carrier and there was a failure to patrol the same after the storm which duty was imposed on members of the petitioning organization. Petitioner Voss has given the following notice with reference thereto:

"NO 2-2
LIBERAL 1128 A. M. May 12
G. E. Poulton
P. P. Poulton

G. E. Poulton P. P. Poulton and C. H. Voss arrange to be present with representatives of your choice for formal investigation to be held Hutchinson Kans Depot 10 A. M. Monday May 14 1951 to develop facts and determine your responsibility if any in connection with failure to patrol track after heavy rains between Hutchinson and Inman Kans about 2 P.M. May 9th 1951 in violation of Rule 237 of Rules and Regulations for Maintenance of Way and Structures and other rules and instructions pertaining thereto GEP CHV and P.P.P. ack receipt Deakin see for sure they get their copies today A 1113 JT HWD GEP CHV PPP.

ABH
1215 P. M."

The investigation held resulted in disciplinary action being taken against Claimant C. H. Voss.

Petitioners contend Claimant was not charged with any offense nor was he notified to attend a hearing in connection with charges that he had committed an offense. That Carrier's notice, particularly the terms "responsibility, if any" are concrete evidence that the Claimant was not charged with any offense, but on the basis of speculation or conjecture, Carrier assumed that Claimant might be somewhat responsible, but that it might equally be reasonable to assume that he was in no way responsible. Also that an investigation cannot be construed to be a hearing as contemplated as the former is stated to be a proceeding to develop facts and Claimant could not be suspended under the rule until given a hearing, not an investigation to develop facts as was the situation herein.

In the opinion of this Board the use of the words "investigation" and "hearing" is synonymous when used as here set out. To hold otherwise would be to take an extremely narrow, limited, restricted and technical view of the same which is not believed to have been the intent of the parties in negotiating Rule 17 and placing it in the controlling Agreement. Also the use of the word "investigation" in the notice sent Claimant of the pendency of the proceedings to be held on a certain date was such as to put the average person on guard as to the nature thereof and also of the fact that disciplinary action might result should facts be developed showing where failure of the duty imposed should be placed.

The use of either the words "investigation" or "hearing" is in our view not the most important principle to be considered in interpreting the use of the same under this rule or similar rules involving proceedings where disciplinary action may be the result. The more important matter for conconsideration is the wording of the notice itself and this as to whether or not the same is sufficient to properly advise the recipient of the nature of the proceeding, his rights with reference to having a representative of his choice present and his responsibility, if any, in connection with the matter under consideration. In the notice under consideration in this claim it will be noted that he was to be present with representative of his choice for a formal investigation and that facts were to be developed. For what purpose? "Determine your responsibility if any in connection with failure to patrol track after heavy rains * * * in violation of Rule 237 * * * and other rules and instructions pertaining thereto * * *."

This Division of the Board and other Divisions of the Board have passed on this and similar questions pertaining to the sufficiency of such notices on numerous occasions. In this connection, see Awards 48, 693, 2974, 4239 and 4521 with others cited therein. Also see Award 15370 of the First

Division of the Board relative to prejudice of the rights of an employe by reason of sufficiency of the notice given to him relative to the pendency of a hearing or investigation and there in a denial award it was found that no prejudice to the Claimant resulted and therefore he had been given a fair hearing under facts developed and notice was held to have been sufficient.

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 claims are denied in accordance with Opinion.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.