

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COOMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union, Local 385 for and on behalf of Edgar Spell waiter on the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he be compensated for time lost from June 22, 1954 to June 27, 1954 inclusive, on trains 15-16 as a result of disciplinary suspension assessed against him by Carrier in violation of Schedule Rule 8(a) of current agreement.

OPINION OF BOARD: The confronting dispute concerns the request of one Edgar Spell that his suspension from June 22 to June 27, 1954, said period amounting to one round trip on his regular assignment, be vacated, and that he be compensated for all time lost, account of such suspension being imposed contrary to the provisions of Rule 8 (a) of the effective agreement. Rule 8 (a) provides as follows:

"An employee who has been in the service more than one hundred and twenty (120) days shall not be disciplined or dismissed without a hearing. He may, however, be held out of service pending hearing. In all instances the employes shall be furnished a letter setting forth the charges after which the hearing shall be held within a period of ten (10) days. Decision will be rendered within ten (10) days from date of hearing."

It is asserted by the Organization that Claimant was not furnished Notice of the pending investigation as required by rule 8 (a) in that none of the three communications addressed to Claimant were, or could have been received by him in time for him to attend the scheduled hearing. It was pointed out that the Board is not here concerned with the merit, or lack of merit, of the charges leveled at Claimant, but rather with the plain provisions of the above quoted rule requiring both notice of investigation and a hearing on charges brought prior to the imposition of discipline.

The Respondent takes that it complied with the provisions of rule 8 (a) when it sent Notices of Hearing to Claimant on June 7 and 8, by registered mail to the last address furnished by Claimant, and that Claimant was careless and indifferent when in the first instance in not keeping his correct address on file and in the second instance in failing to cooperate with the attempts by the Post Office Department to deliver the said Notices sent by registered mail.

It was further asserted that the holding of a hearing with the accused not present would have been an empty, and useless undertaking.

Rule 8 (a) is clear and without ambiguity. It requires that all employes with more than 120 days service be afforded a hearing prior to the imposition of discharge or discipline of a lesser degree. This rule likewise provides that in all instances the employe will be furnished a letter setting forth the charges and that a hearing will be held within the time limit designated.

In brief, both the letter and intent of the rule make (1) the giving of notice a prerequisite initial step to the conduct of a hearing (2) the conduct of a hearing a prerequisite initial step to the imposition of discipline. Both are essential if we are to give life and meaning to the verbiage of the Rule and the failure to meet either or both requirements makes any result achieved null and void.

There having been no hearing held here, the imposition of discipline was improper.

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 effective agreement.

AWARD

Suspension of Claimant between June 22 and June 27, 1954, inclusive, vacated; the Claimant to be compensated for all wage loss incurred, and with his record cleared in accordance with the provisions of Rule 8 (f).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1957.