

Award No. 11222
Docket No. TE-9593

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE VIRGINIAN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Virginian Railway, that:

1. Carrier violated the Agreement between the parties hereto when it failed and refused to compensate H. M. Lee and P. E. Painter for attending investigation at Victoria, Virginia, on August 31, 1956.

2. Carrier shall now be required to compensate H. M. Lee for one (1) day, and P. E. Painter for one (1) day (in addition to amount already paid) at the rates of their respective positions for services on August 31, 1956, as aforesaid.

OPINION OF BOARD: There is no dispute in the essential facts in this case, except whether the Claimants were witnesses at an investigation held by the Carrier or whether they attended said investigation as interested parties.

The Claimants on their rest days attended an investigation for the purpose of determining the responsibility for a derailment that occurred in the immediate area of their employment.

The investigation was held approximately 150 miles from the scene of the accident and the Claimants were instructed by the Carrier to leave with Carrier's Special Agent at 4:00 A. M. in order to arrive at the site of the investigation not later than 8:00 A. M. One of the Claimants was required to be at work at 4:00 P. M. on the day of the investigation which was the end of his rest period.

Both of the Claimants submitted a claim for one day at the pro rata rate.

The Carrier allowed the Claimants expenses, but disallowed the claim upon the assertion that the Claimants attended the investigation as interested parties.

The Carrier pursuant to Article 13 charged both of the Claimants, and for reasons of brevity we will only submit one for illustrative purposes, said charge was as follows:

"THE VIRGINIAN RAILWAY COMPANY

"Location Victoria, Va.

Date August 18, 1956

"Mr. Hugh M. Lee, Tel. Clerk

"Dear Sir:

"You are hereby charged as follows:

"To determine responsibility in connection with derailment and damage to equipment of Extra 17-15 East Approximately 8:34 P. M. on August 11, 1956, at Tidewater, Va.

"A hearing will be held at 8:00 A. M., Friday, August 31, 1956,
(Time) (Date)
Trainmaster's Office
Victoria, Va.
(Location)

to consider these charges. You may be represented by representative of your choice and may present any witnesses you desire.

"Please acknowledge receipt of this notice of hearing in space indicated on attached copy.

"Yours very truly,

J. P. STRICKLAND, Superintendent
(Title)"

Article 13 is the rule designated for the handling of discipline matters, and the section of said rule relevant to the issue presented herein is as follows:

"* * * * *

"Prior to the hearing, such employe will be appraised of the charge against him and given reasonable opportunity to secure the presence of necessary witnesses."

An examination of the Carrier's charge reveals a failure to appraise the Claimants of the charge against them. It is not our intention to restrict the Carrier's accusation to the requirements of formal legal pleadings, but their charge should be in such terms that would make known to the accused the nature of his misconduct or the violation of the rule involved.

The charge presented herein does not inform the Claimants of any misconduct or inform them that they have violated an operating rule. Many interpretations of this charge can be reached; it could be interpreted as directive to the party named therein to hold the investigation; it also can be interpreted as a directive to attend a fact finding meeting.

We are cognizant of the fact that the charge contains a sentence informing the Claimant that he may be represented by a representative of his choice and that he may call witnesses in his behalf. The choice of utilizing these latter privileges rest with the accused employe provided he is properly charged.

Similar charges have been reviewed by this Board. See Award 6846 wherein Referee Radar said the following:

"In the matter of the Notice we doubt if the language used in the same should be construed as charging the Claimant with notice that he personally was being charged with specific and direct notice of responsibility for the collision."

Also see Award 11019.

Therefore, we conclude that the claimants did not attend the investigation as interested parties.

The Claimant Painter's claims on his own behalf and that of the other Claimant is correct within the terms that it was presented. There is support for it in Rule 17 (b) which provides as follows:

"(b) Extra employes and regular employes on vacation, on leave of absence or used on relief days shall be allowed eight (8) hours pay at the rate of position last worked and, in addition, necessary actual expenses while away from home for each day used under this rule."

The Agreement was violated.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1963.