Award No. 14123
Docket No. TE-13622

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

ILLINOIS TERMINAL RAILROAD COMPANY

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

1. Carrier violated Rule 21 of the Agreement between the parties in the manner in which Carrier assessed discipline against C. E. Eaker, Towerman, North Wood River Tower, Illinois.

2. The Carrier obtrusively and capriciously ignored the requirements of Rules 21, that an employe shall first have a fair and impartial trial; shall be notified for what purpose he shall be called for hearing; shall be charged with an offense; that a hearing shall be held upon the offense with which charged; none of these requirements of Rule 21 having been met by the Carrier prior to a judgment of guilt being entered upon the record by the Carrier and discipline being assessed.

3. The Carrier shall now clear the record of the claimant, C. E. Eaker, of the thirty days' suspension, and compensate him for all monetary loss sustained for the thirty days' period of his suspension, plus salary and expenses for one day attending the investigation, Monday, August 28, 1961.

OPINION OF BOARD: This is a discipline case, wherein the Carrier suspended Claimant for thirty (30) days for an alleged violation of Rules 611 and 615.

We are called upon to determine whether or not this Claimant was given his contractual right to a day in court.

The Organization contends that the notice served on Claimant simply provided for a fact finding investigation. They argue that after said fact finding investigation did in fact determine the cause of the derailment, Carrier should have then complied with the agreement and charged Claimant with an offense under the rules, so that he would have an opportu-

nity to present such defense as was available to him in refutation of the charges. The Carrier answers that such a proceeding would be repetitious. However, we are not impressed with the concern of Carrier to save itself time and effort at the expense of the employes.

This Board has received many cases which could have been settled on the property if the Carrier would heed the advice of Award 13978. Therein Referee Williams said, "Not only must the trial be fair and impartial, but the record must contain facts which give the appearance of fairness and impartiality."

If in this case the employes could in fact prove that Claimant was denied his contractual right to present whatever defense he chose to make in his own behalf, we would not hesitate to find for the Claimant. He has a right to his day in court, and he has a right to make whatever defense he sees fit to clear himself and his record. To deny him this right is to deprive him of due process of law.

In the instant case the following notice was received by the Claimant:

"Federal Tower
August 23, 1961

Messrs. D. R. Allen, Condr.
R. French, Engr.
J. Spano, Fireman
C. Ochs, Brakeman
J. Murray, Brakeman
C. E. Eaker, Operator

Please report for formal investigation in my office at Federal Tower at 8:00 A. M., Central Standard Time, Monday, August 28, 1961, to develop the facts and determine your responsibility, if any, account accident at North Wood River about 10:20 A. M., August 18, 1961, when the 7:00 A. M., Standard Oil Job with Motor 709 shoving thirty-four cars from Wann Yard, derailed the following cars: UTLX 10673, empty tank — TN&O 75188, a load — UTLX 60138 and 47189, empty tanks, in Interlocker Plant at North Wood River Tower.

You may bring a representative and witness in your behalf as provided in your scheduled agreement.

/s/ T. G. Byrnes,
Trainmaster

Messrs. E. L. Keister
W. R. McOwan
D. B. Hill
A. E. Mester
J. R. McGowan
R. R. Boyce"

Rule 21(a) and (b) are as follows:

"(a) No employe will be dismissed or censured without first having a fair and impartial trial and his guilt established. When an

employe is called for such a hearing, he will be notified for what purpose he is called.

(b) When an employe is charged with an offense which may warrant his removal from service, such action will not be taken without a hearing before proper officials having jurisdiction, at which hearing he may have representatives of the committee or an employe of his choice to represent him. The General Chairman of the Organization will receive copy of all notices to attend hearing sent to employes covered by this agreement, and may participate in hearings or appeals. Such hearing shall be held within ten (10) days from the date the employe is charged with the offense. A transcript of the evidence taken at a hearing or on an appeal will be furnished to the employe and his representatives and they shall be notified in writing of any discipline assessed within ten (10) days from date of completion of hearing."

We examine the notice to determine if it complies with the rule. The test we generally use is one of deciding if the employe was given sufficient notice to allow him to know and understand with what he is charged, and to allow him to prepare to defend himself against such charge.

In this case the Carrier did not make a specific allegation of a rule violation, but it did, in our opinion, throw in enough language to let the men know what the case was all about. We hold that the notice, although it could have been more specific, was sufficient to advise Claimant of the incident involved. There seems to be little doubt that he was able to prepare himself to defend against the matters involved in the notice.

The Carrier found Claimant to be in violation of Rules 611 and 615. The Organization contends that Claimant was denied the right to defend against these specific rule infractions, since he was not aware that they were involved in this hearing.

A careful reading of the transcript shows that Claimant answered several questions concerning these two rules and that he did in fact present several statements which indicated what his line of defense actually was in this case. He did not appear to be surprised by the specific charges raised at the hearing, nor did he seek a continuance to allow himself to prepare a defense thereto.

Therefore, we find and hold that this record, although it could be better, does not present error sufficient to allow us to reverse the findings of the Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1966.

CONCURRING OPINION OF CARRIER MEMBERS, AWARD 14123, DOCKET TE-13622 (Referee Hamilton)

We concur in the finding that the agreement was not violated. We also concur in the Referee's specific findings that the notice of investigation and investigation were sufficient, that the double investigation for which the Employes argued is not required by the agreement, that the Claimant was not denied his "day in court" nor his "contractual right to present whatever defense he chose."

We are unable, however, to concur in the Referee's unsupported and inappropriate statements that:

> ". . . we are not impressed with the concern of Carrier to save itself time and effort at the expense of the employes.
>
> This Board has received many cases which could have been settled on the property if the Carrier would heed the advice of Award 13978. Therein Referee Williams said, 'Not only must the trial be fair and impartial, but the record must contain facts which give the appearance of fairness and impartiality.' "

There is no factual basis in this record for the suggestion that Carrier took any measure whatever that was either designed to or had the effect of saving Carrier time "at the expense of the employes" in presenting their defense. At the commencement of the investigation, Claimant was asked these questions and gave these answers:

"Q. Are you ready to proceed with this investigation?

A. I am.

Q. Were you notified in proper form to attend this investigation?

A. I was."

Also, at the conclusion of the investigation, the Claimant was asked these questions and gave these answers:

"Q. Has this investigation been conducted in a fair and impartial manner and in accordance with the scheduled agreement?

A. Yes.

Q. Do you have any further statement to add that is pertinent to this case?

A. No."

In view of these clear admissions of the Claimant in the presence of his representatives, and the specific findings of this Board that Carrier conformed to all requirements of the agreement, we find it impossible to justify the Referee's unwarranted suggestion that this case "could have been settled on the property if the Carrier would heed the advice of Award 13978." Furthermore, attention is respectfully directed to our dissent to Award 13978.

G. L. Naylor
R. A. DeRossett
W. F. Euker
C. H. Manoogian
W. M. Roberts