



Award No. 15702
Docket No. TE-14225

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven & Hartford Railroad Company, that:

1. The telegraphers' agreement was violated, when, on March 25, 1962, Mr. E. D. Fulton, Operator, Boston Division, was assessed discipline in a manner not consistent with the terms of the agreement in that he was not informed of discipline within the time limits prescribed by said agreement.

2. Mr. Fulton shall be reimbursed for the time lost while held out of service from March 8, 1962, until March 19, 1962, eleven days, at the rate of the position held at the time of discipline hearing, and his personal record cleared of discipline in connection with the hearing held March 14, 1962.

OPINION OF BOARD: The issue involved in this case is whether Carrier has violated the applicable Agreement, to wit:

"ARTICLE 27(b).

*** * * The employe shall be notified of any discipline assessed within ten (10) days from the date of hearing.* * ***

by delivery of the required notice to a fellow employe at claimant's usual place of business, for relay delivery to claimant. Claimant actually received the notice on the eleventh day after the date of hearing.

The record shows Carrier knew or should have known that claimant would not return to his usual place of business until the date of the delivery (R. 9). There is evidence of past practice to dispatch such notices via United States mail (R. 9). The notice next preceding the notice in question was, in fact, dispatched by United States mail directly to claimant's home.

Carrier has not satisfied its burden of proof that the notice was timely given and, therefore, the claim will be sustained.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.