

Award No. 15855
Docket No. SG-15558

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company, Lake Region (formerly The New York, Chicago and St. Louis Railroad Company) that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 58, when, as indicated by Division Engineer P. L. Montgomery's letter of May 4, 1964, it suspended Signal Maintainer M. E. Koselke for thirty (30) calendar days following an investigation held on April 20, 1964, to determine his responsibility, if any, in connection with the collision of Motor Car No. 5009 and Extra East No. 806 at the East End of Hobart, Indiana, on April 9, 1964.

(b) The Carrier be required to compensate Mr. Koselke for all time lost as a result of Mr. Montgomery's May 4, 1964 letter.

OPINION OF BOARD: This is a discipline case. While moving west on the main track during switching operations, the engine and one car of Extra East No. 806 collided with an eastbound track motor car being operated by Claimant Koselke. After a hearing on this matter, the Claimant was required to serve a 30-day calendar suspension from work.

Basically it is the position of the Claimant that Carrier, by its action in this case, violated Rule 58 of the current Agreement, or more specially Rule 58(a) which reads as follows:

"RULE 58.

DISCIPLINE AND APPEAL

(a) An Employee who has been in service more than 30 days shall not be disciplined or dismissed without fair and impartial investigation, at which investigation he may be assisted by representatives of his choice. He may, however, be held out of service pending such investigation and such holding from service shall not be deemed a violation of the principle of fair and impartial investiga-

tion and appeal. The investigation shall be held within ten days after the date when charged with the offense or held from service. Decision will be rendered within 15 days after completion of the investigation."

The evidence in this case shows that Carrier did not specifically charge the Claimant prior to the hearing which eventually lead to his suspension. A review of the notice sent to the Claimant advising him to attend the hearing states that it is to be held "to determine your responsibility, if any, in connection with collision . . . involving Motor Car No. 5009 and Extra East 806. You may have witnesses and/or representatives present at the time if you so desire."

The Organization, on behalf of Claimant, contends specifically that the Claimant was not charged with any offense and hence that portion of Rule 58(a) which reads: "The investigation shall be held within ten days after the date when charged with the offense or held from service," was violated. Either a preliminary fact finding investigation should be held preliminary to the filing of a charge, or a charge should have been filed initially by the Carrier to enable the Claimant to properly defend himself.

The Carrier maintains that the notice to the Claimant stating that an investigation was to be held "to determine your responsibility, if any," constituted a charge as contemplated by Rule 58(a). Further they stress the fact that neither the Claimant nor his representative objected to the hearing, and were given the right of cross examination of opposing witnesses, that the notice was adequate as to the reason for the investigation and afforded the Claimant full opportunity to prepare his defense, arrange for proper representation and to secure any witnesses he desired.

We are well aware that a charge in a case of this type does not have to conform to that degree of specificity required in a criminal indictment, but we wish to emphasize that Rule 58(a), negotiated by both parties involved in this dispute, states that "the investigation shall be held within ten days after the date charged with the offense" and in Rule 58(e) we note the following: "If the charge against the employe is not sustained . . ." (Emphasis ours.)

The words "to determine your responsibility, if any" do not constitute a charge within the intendment of Rule 58(a). Award 12814 (Hall) involved the same parties, the same issues and the same rule. The Board in that case stated:

"It cannot be seriously urged that a specific charge of some kind is not contemplated by the Agreement. Webster's New Collegiate Dictionary defines a charge as 'an accusation of a wrong or offense.' The letter addressed to the Claimant by the Supervisor contains the following: ' . . . to determine your responsibility, if any, in connection with motor car No. 1488 . . . ' In view of the fact that the record discloses no prior investigation by the Carrier of the circumstances surrounding the accident and in light of the qualification in the letter 'your responsibility, if any,' just what offense was the Claimant charged with?

Was he charged with the violation of a company rule? Was he charged with negligence in the operation of the motor car? Was it charged his negligence was the cause of the accident? * * *

We agree with the reasoning in Award 12814 and hold, as that award held, that the Carrier failed to properly apprise Claimant of the charge against him and thus violated Rule 58 of the Agreement. Claimant was therefore, in our judgment, denied due process. We will sustain the claim.

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 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 13th day of October 1967.

CARRIER MEMBERS' DISSENT TO AWARD NO. 15855, DOCKET SG-15558 (John J. McGovern, Referee)

For the reasons stated in dissent to Award 12814, we dissent.

**J. R. Mathieu
R. A. DeRossett
W. B. Jones
C. H. Manoogian
W. M. Roberts**