

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

John J. McGovern, Referee

PARTIES TO DISPUTE:**AMERICAN TRAIN DISPATCHERS ASSOCIATION****THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Pennsylvania Railroad Company (hereinafter referred to as the "Carrier"), violated the existing Agreement between the parties, Regulation 6 of Part 1 thereof in particular, by its action in imposing discipline upon Train Dispatcher J. A. Eason, pursuant to notice dated February 15, 1966.

(b) The Carrier be required to cancel the disciplinary action referred to herein, clear the individual claimant's record with respect thereto, and compensate him for time lost as a result of the violation involved.

OPINION OF BOARD: The Claimant, as a result of an incident which occurred during his regular tour of duty on January 31, 1966, was verbally advised by a Carrier official to "come in a little early and have a little investigation prior to departing for duty 3:00 P.M. to 11:00 P.M. February 1, 1966." The investigation was held, and based on evidence adduced, Claimant was given a hearing on February 9, 1966. He was found guilty of the charges presented, and was assessed discipline of 7 days' suspension, which upon appeal was reduced to 3 days' suspension.

Petitioner claims a violation of Regulation 6-A-2 of the Agreement which reads:

"6-A-2. Statements. A Train Dispatcher who is required to make a statement or attend an investigation prior to the trial, in connection with any matter which may eventuate in the application of discipline to any employe, will be given reasonable advance notice in writing of the nature of the investigation and the time and place of same. If he desires to be represented, he may be accompanied by the duly accredited representative, as that term is defined in Part I of this Agreement, and shall be granted reasonable opportunity to secure the presence of such representative."

Petitioner specifically claims that the above cited regulation has been violated by Carrier failing to have advised Claimant in writing of the inves-

tigation and not having been informed of his right to representation at the investigation.

We are aware of our awards interpreting contractual language being directory and not mandatory in nature, as well as those holding that timely objections must be made at the investigation, etc.; otherwise they will be considered as having been waived; we, however, distinguish these cases from the instant one based purely on the factual situation. To summarily summon an employe to an investigation without advising him of his right to counsel, is, in our judgment, tantamount to a total disregard of the fundamental concept of due process. We will sustain the claim as submitted.

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 2nd day of August 1968.