

Award No. 16740
Docket No. CL-16726

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6103) that:

(a) The suspension from service October 20 to October 26, 1965, of Francis A. Gould, Assistant Station Master was unjust.

(b) Claimant Gould's record be cleared in connection with his failure to assume responsibility as Assistant Station Master at Providence, Rhode Island at the time of the tail end collision involving Train 191 on September 24, 1965.

(c) Claimant Gould shall now be paid for all wage loss sustained while suspended from the service.

(d) Claimant Gould shall now be paid a daily rate adjustment between his former position as Assistant Station Master and the position he is presently occupying under protest Relief Baggage Foreman \$21.93 per day.

OPINION OF BOARD: On September 24, 1965, Claimant held the position of Assistant Station Master with hour of assignment 3:00 P.M. to 11:00 P.M. On this date at approximately 6:45 P.M. a collision occurred just west of the passenger station when a yard switch engine ran into the rear of Train No. 191.

An investigation was held on October 1, 1965 and Claimant was requested to appear as a witness only and was not under any charge. He appeared without representation.

By letter dated October 15, 1965, Claimant was notified to attend investigation on October 20, 1965, on charge "in connection with your alleged

failure to assume your responsibility as Assistant Station Master at time of the tail-end collision involving Train No. 191 on September 24, 1965."

Under Notice dated October 28, 1965, Claimant, as a result of the October 20, 1965 investigation was found guilty as follows:

* * * * *

"Violation of that part of the General Notice which states, 'Safety is of the first importance in the discharge of duty,' and for your violation of Rule 770 and accordingly you will be disciplined as follows:

Disqualified from working as Station Master or Assistant Station Master at Providence, Rhode Island, and thereby may displace according to your seniority and to the terms of your Agreement. The seven days you were withheld from service, namely October 20 to October 26, 1965 inclusive, will be considered as discipline."

Contrary to the arguments advanced by the Carrier, in that Petitioner's Statement of Claim is defective in its notice of intent to this Board, wherein the claim does not properly present or represent the questions it wants decided, we find that the Statement of Claim does place in issue whether or not Claimant was unjustly disciplined. Petitioner at all times in processing the claim have alleged violation by Carrier of Rules 16 — Discipline, Rule 17 — Hearings, Rule 18 — Prior Statements and Rule 19 — Testimony. Said violations were qualified that Claimant had not been advised of the concise charges placed against him; that he had been unjustly accused and disciplined because of an illegal investigation. The Carrier has categorically denied these allegations, therefore the questions here presented are properly before the Board and have never been waived by the Petitioner. It is this Board's function to inquire into and determine whether or not the rules in the Agreement relating to hearings and investigations have been violated and must necessarily accept them as written.

In considering transcripts of investigations or hearings the Board is concerned first, with compliance with proper and timely notice and as to the specific charge or charges; and, second, an examination of the record to determine if there is competent evidence contained therein to substantiate the trial examiners findings on behalf of Carrier.

Petitioner alleges that the Claimant had not been advised of the concise charges placed against him in violation of Rule 17 (a) — Hearings, which is set forth as follows:

"At a reasonable time prior to the hearing, the employe shall be apprised in writing of the precise charge against him."
(Emphasis ours.)

In Award 14778 (Dorsey) which contained a similar rule and requirement as to "exact charge or charges," the Board held:

* * * * *

"... The indictment apprises the defendant of the precise (exact) illegal conduct with which he is charged so he can prepare

and confine his defense thereto; fishing expeditions are barred in the trial; only probative material and relevant evidence is admissible. The defendant cannot be found guilty of any other crime than spelled out in the indictment.

and;

... No man can defend himself against a charge to him unknown. Certainly it is not due process to shovel anything and everything into a record and leave to the unhibited hearing officer finding misconduct he feels the employe has committed. Issue must be joined before hearing." (Emphasis ours.)

The record in this case is clear that the Claimant was found guilty and disciplined as violating the General Notice for Safety and for violation of Rule 770; not for misconduct or responsibility resulting in a tail-end collision as originally charged. We therefore agree with the reasoning in Award 14778 and hold that Claimant was denied due process to prepare and present his defense to such charges, in that Carrier failed to properly apprise Claimant of the charges against him in violation of Rule 17 (a).

The Board feels that it is also significant to note that Carrier made it clear in the record that Claimant had not been charged with any responsibility for the collision that occurred, yet, Carrier elected to proceed and prosecute as to this charge. Carrier repeatedly read Claimant's testimony from a transcript obtained at the October 1, 1965 investigation, wherein Claimant appeared as a witness only. In Carrier's attempt to impeach Claimant from prior testimony as a witness, by use of the prior transcript of hearing, Carrier was unsuccessful. We believe that by Carrier being in complete control of the October 1, 1965 transcript, Carrier certainly was in a position to charge the Claimant with a precise charge or charges it wished to pursue in the initial notice. The Carrier officer did not confine the questioning to the initial charge and may not elicit evidence of possible infractions not directly involved in the charge as set forth in the original notice.

For the foregoing reasons, we will sustain the claim as to items (a), (b) and (c), however, we will deny item (d) on the basis that the Statement of Claim did not place in issue the fitness and ability of Claimant to continue in the position of Assistant Station Master.

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 Carrier violated the Agreement.

AWARD

Claim sustained as to items (a), (b), (c).

Claim denied as to item (d).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of November 1968.



Serial No. 233

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 16740

DOCKET NO. CL-16726

NAME OF ORGANIZATION:

**BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS &
STATION EMPLOYES**

NAME OF CARRIER:

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

Upon application of the representative of the employees involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934; the following interpretation is made.

The Award sustained the claim as to items (a), (b) and (c), and denied item (d). In denying claim (d), the Board stated:

" . . . we will deny item (d) on the basis that the Statement of Claim did not place in issue the fitness and ability of Claimant to continue in the position of Assistant Station Master."

It is the position of the Employees " . . . that to fully comply with Award No. 16740, the Carrier should have returned Mr. Francis A. Gould to his Assistant Stationmaster position at Providence Station, Providence, Rhode Island on or before January 1, 1969, the order date, and must now do so, and that rosters in effect must be corrected to again reflect his qualifications as Assistant Stationmaster."

Carrier argues that the clearing of Mr. Gould's record as to suspension and for any responsibility for the collision does not require that the disqualification as Assistant Stationmaster be rescinded. That all that was placed in issue in item (a) was the suspension from service.

Petitioner's Statement of Claim at the time Award 16740 was adopted, Item (a) thereof, reads as follows:

"(a) The suspension from service October 20 to October 26, 1965, of Francis A. Gould, Assistant Station Master was unjust." (Emphasis ours)

The basis upon which the claim was sustained was predicated upon the fact that Claimant was denied due process to prepare and present his defense due to Carrier's failure to properly apprise Claimant of the precise charges against him.

The only issue set forth in the Statement of Claim was whether the suspension "was unjust". The majority found that it was.

The Statement of Claim did not place in issue the disqualification of Claimant as an Assistant Station Master nor was reinstatement a proposed remedy for Claimant to continue in the position of Assistant Station Master.

The Board is restricted to the language of the claim before it and cannot go beyond or expand or amend a claim which was not processed in accordance with the Board's Rules of Procedure.

Award 16740 is, accordingly, interpreted to mean:

- (1) that the Carrier failed to properly apprise Claimant of the charges against him in violation of Rule 17(a)
- (2) that for the reasons hereinbefore set forth, Claimant will not be restored to the position of Assistant Station Master.
- (3) Claimant's record be cleared in connection with his alleged failure to assume responsibility as Assistant Station Master at time of the tail-end collision involving Train 191 on September 24, 1965
- (4) Claimant shall be paid for all wage loss sustained while suspended from service from October 20 through October 26, 1965
- (5) Claimant be paid at the rate of Assistant Station Master for the period of suspension October 20 through October 26, 1965.

Referee Herbert J. Mesigh, who sat with the Division as a neutral member when Award No. 16740 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1969.