



Award No. 17167

Docket No. SG-17822

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

James Robert Jones, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ST. LOUIS-SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis Southwestern Railway Lines:

On behalf of Signal Maintainer W. C. Parker that the forty-five (45) demerits be removed from his personal record and he be allowed pay for all time lost, including overtime on his regular position, all seniority and rights unimpaired, including any and all expenses caused account of the Carrier's violation of Rule 63 in connection with and following an investigation held on August 3, 1967.

(Carrier's File: PR-76586)

OPINION OF BOARD: In this case, Claimant, Signal Maintainer Parker, was relieved from duty July 15, 1967, pending investigation of an alleged altercation between Parker and Agent-Telegrapher Rogers. On July 17, 1967 investigation of Claimant was set for July 24. Meanwhile, Carrier was asked for a postponement of the hearing from July 24 to August 3. This request for postponement was made by TCEU General Chairman Dafft who was representing Agent-Telegrapher Rogers.

On July 19, 1967, Carrier notified Parker and Rogers that the hearing would be postponed from July 24 to August 3.

At the hearing Claimant Parker protested because Claimant contended Rule 63 of Article 6 had been violated by the Carrier.

Rule 63 of Article 6 states in part as follows:

"ARTICLE 6

DISCIPLINE AND GRIEVANCES

"RULE 63. (a) INVESTIGATION AND DISCIPLINE: An employee who has been in service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation, at which investigation he may be represented by a duly authorized representative of

the organization or by an employee of his choice. He may, however, be held out of service pending such investigation. At least forty-eight (48) hours prior to the investigation, he shall be advised of the precise charges against him and shall have a reasonable opportunity to secure the presence of necessary witnesses and representative. The investigation shall be held within ten (10) days of the date when charged with the offense or held from service. A decision will be rendered within ten (10) days after the completion of investigation. If a transcript of investigation is made, a copy of same will be furnished the employee or his representative."

Carrier contends that Rule 63(a) should be distinguished from the so-called "time limit" rules which specifically provide penalties applicable to both parties in the event that time limits which are written into the Agreement are not complied with. Furthermore, Carrier states that Carrier's letter to Claimant on July 19 notifying him of the postponement in the hearing set forth the reasons for the postponement and that if the Claimant objected to the postponement, he should have done so then and not waited until after the ten (10) day period had run.

To reach our conclusion, we must look solely to the Agreement. The contract between the Carrier and Signalmen states unequivocally that for investigation and discipline—"The investigation shall be held within ten (10) days of the date when charged with the offense or held from service." There is no provision allowing one of the parties to unilaterally postpone the investigation beyond this ten (10) day period even for good cause. In order to waive this ten (10) day requirement, it seems obvious that both parties must so agree. It seems further obvious that some third party operating under a different Agreement—in this case the TCEU—could not alter the provisions of Signalmen's Agreement Rule 63(a) unless both the Organization and Carrier agreed to the alteration.

Therefore, the question to be resolved is whether Claimant and Carrier mutually agreed to the postponement of the investigation, thereby waiving the ten (10) day requirement of Rule 63(a).

We find that the two parties did mutually agree to waive Rule 63(a). In Carrier's letter of July 19, Claimant was apprised of the postponement and the reason therefor. Claimant is presumed to know the provisions of the Agreement as well as the Carrier. If postponement of the investigation would have been prejudicial to Claimant or unduly penalized him, Claimant had ample time to object to the postponement. If he had objected, then obviously there would have been no mutual agreement to waive Rule 63(a) as it pertains to the ten (10) day requirement.

However, Claimant's failure to object to the postponement would lead a reasonable man to believe that Claimant agreed to the postponement. Therefore, the provisions of Rule 63(a) as regards the ten (10) day limit are waived.

Furthermore, we can find no arbitrary or capricious action by the Carrier with respect to the investigation that would warrant this Board to overturn the findings of the investigation nor the penalties imposed against Claimant.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.

Dissent to Award No. 17167

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The Majority, Carrier Members and Referee, have erred in their conclusion in Award No. 17167. After correctly finding that the controlling Agreement provision unequivocally proscribes a unilateral postponement of an investigation beyond the stipulated 10 days, it is contended that the Claimant by his silence agreed to the postponement. Such was not the case.

The Carrier, as well as the employees, must be presumed to know the terms of the Agreement. Hence, it is clear that the Carrier knew that it must obtain agreement before it postponed the investigation, but no such agreement was sought and it is manifest that none was expected. The Carrier's only move was to arbitrarily and unilaterally notify the Claimant of the postponement and to order him to report on the new date.

Contrary to the implication of the majority, there is no burden, either explicit or implicit, placed upon the employees to protect the Carrier from procedural error or to implement the benefits obtained under their working Agreement.

Award No. 17167 is in error and I dissent.

/s/ W. W. Altus, Jr.
W. W. Altus, Jr.
For Labor Members
June 17, 1969

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