Award Number 17592

Docket Number CL-18139

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6580) that:

(1) Carrier violated the terms of the currently effective Agreement between the parties at Memphis, Tennessee when it arbitrarily, discriminately, and capriciously dismissed from its service Employes B. D. Allen and Shirley Cruse based on the evidence of a hearing conducted on March 4, 1968, both employes being returned to service on October 24, 1969 without pay for time lost.

(2) Carrier shall now be required to reimburse B. D. Allen for all losses sustained, with vacation and all other rights unimpaired, beginning at 12:01 A.M. March 10, 1968 and continuing on each work day thereafter to October 24, 1968 when he was returned to service at the rate of his position of Relief Clerk and/or any other position he would have been entitled to work had he not been removed from service, or his protected guarantee under the February 7, 1965 Agreement whichever is greater, and his record cleared of the unfounded charges brought against him.

(3) Carrier shall now be required to reimburse Shirley Cruse for all losses sustained with vacation and all other rights unimpaired beginning at 12:01 P.M. March 10, 1968 for each and every work day thereafter to October 24, 1968 when she was returned to service at the rate of any and all positions she would have been entitled to work had she not been removed from service and her record cleared of the unfounded charges brought against her.

OPINION OF BOARD: This dispute involves (1) alleged procedural defects under Rule 26 of the controlling agreement and Rule 49 (Article V of the August 21, 1954 National Agreement) and (2) the merits of the claim.

It is the contention of the Organization that when the Carrier eliminated the highest step of the appeal procedure on August 1, 1968, that all appeals pending at that step (General Manager) should have been re-determined by the former intermediate appellate office (Division Manager) but who, effective August 1, 1968 became the highest officer designated by the Carrier.

The instant cases were appealed to the General Manager on July 2, 1968 (prior to the August 1, 1968 effective date of the new designation) and on August 5, 1968 (after such effective date) the appeal was declined.

We do not concur with the argument of the Organization. On August 1, 1968 the appeal, having been presented to the General Manager was properly declined by him. Alternatively, the appeal, as of the date of August 1, 1968 had been declined by the highest officer designated by the Carrier, that is, the Division Manager. There is nothing in the agreement requiring a review of his original declination.

We next turn to the question as to whether the notice of charges satisfies the requirements of Rule 26 of the controlling agreement, the second sentence of which reads as follows:

> "At a reasonable time prior to the investigation the employe shall be advised in writing of the precise charge or charges."

The material portion of the notice is as follows:

> ". . . . . to answer charges of reported improper deportment, negligence and indifference to duty during your tour of duty commencing at 11:30 P.M. February 7, 1968 to 7:30 A.M. February 8, 1968 in violation of Rules 701, 702, 706 and such other rules of the Transportation Department governing your employment as may be developed in testimony adduced at the investigation."

While we agree that the language of Rule 26 requiring that "the precise charge or charges" be presented to claimants does not require the same degree of notice as is required in a criminal indictment, nonetheless we believe it requires something more than subjective conclusions without reference to any facts forming the basis for such conclusions, coupled with general allegations of violation of rules containing many separate regulations to which a catchall phrase is added.

> "and such other rules of the Transportation Department governing your employment as may be developed in testimony adduced at the investigation."

Not only must a "charge" be sufficient to notify a person of the alleged violations, it must also be sufficiently precise as to avoid fishing expeditions.

Contrary to the contention advanced by the Carrier, the question of precision of notice was raised on the property and is before the Board.

At the investigation Claimant Allen announced that he was not ready to proceed and at one point in his testimony he said:

> ". . . . I do not know what the Company, or what you have in mind, and therefore I do not feel that I should answer anything until I have been accused of something specific. . . . I am not refusing to answer, I am just stating the questions asked me are of a blind nature, and I do not know what the charges are, ..."

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 Agreement was violated by the Carrier.

AWARD

Claim sustained.

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.

CARRIER MEMBERS' DISSENT TO AWARD 17592, DOCKET CL-18139 (REFEREE GLADDEN)

In view of the facts in this case which were admitted by the Claimants themselves, we respectfully submit that the charges were sufficiently precise (see Awards 3270, 10355, 11170, 11443, 11783, 12898, 13953, 15025, 15751, 15927, 16065, 16115, 16121, 16344, 16637, 16816, 17091, 17154, and many others). It is totally unrealistic to suggest that either Claimant did not know exactly what was involved.

In cases involving the type of misconduct in evidence here, a carrier is faced with a dilemma. Saying more than is absolutely required in the charges may be construed by some as unnecessary character assassination—the very thing about which Claimant Cruse had much to say at the investigation. Saying only that which is necessary to fully apprise a claimant of the precise charge against him may be construed as not sufficiently precise by a referee who overlooks the fact that it is the claimant who is to be apprised and applies an objective third person test instead of a reasonable test that takes into consideration the claimant's admitted knowledge.

In the instant case, Carrier exercised due restraint in drafting the charges. We believe the record establishes beyond any conceivable doubt that a recital of additional facts in the charges would not have aided Claimants in their defense and would not have served any proper purpose. Obviously, the agreement contemplates presentation of evidentiary facts at the investigation, not in the charges.

/s/ G. L. Naylor
G. L. Naylor

/s/ R. E. BLACK
R. E. Black

/s/ P. C. CARTER
P. C. Carter

/s/ W. B. Jones
W. B. Jones

/s/ G. C. WHITE
G. C. White

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