

Award No. 18467

Docket No. TE-18792

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Boston & Maine Corporation, T-C 5725, that:

1. Carrier violated the Agreement between the parties because it improperly charged Mr. B. T. Crowe, subsequently found him guilty based upon the improper charge and assessed discipline which, if warranted in the first instance, was excessive and not consistent with the seriousness of the charge.

2. Mr. Crowe shall be reimbursed for all time lost and have his record cleared.

OPINION OF BOARD: On September 13, 1968, Carrier forwarded to Claimant a notice of hearing, which read as follows: "Arrange to be in my office at 10:00 A. M. September 18, 1968, for a hearing to develop all the facts in connection with your failure to perform your work properly and conduct unbecoming an employee." Following said hearing, Claimant was notified that he had been found guilty of not complying with instructions from General Yardmaster and Yardmaster at Tower 5 promptly and questioning the validity of such instructions, and consequently, he was suspended from work and assessed marks as discipline for the infraction.

The sole question before us is whether the Carrier violated Article 14 of the applicable Agreement in disciplining Claimant. Article 14 states, in pertinent part, "at a reasonable time prior to the hearing, the employee will be apprised in writing of the precise charge against him."

We do not believe Claimant was so apprised. He was charged with "failure to perform your work properly" and "conduct unbecoming an employee." Clearly, these were not precise charges within the purview of Article 14. The notice was void as to the day, time and place where the alleged offense was perpetrated. The notice certainly would not enable the Claimant to know in a meaningful way how to prepare his defense. Article 14 as well as due process of law guarantees Claimant, at the very least, this procedural safeguard. He was deprived of it in this instance.

There is conflict in the Record as to whether Claimant was deprived of five or six days' pay. Due to this conflict, the Board is unable to ascertain,

with certainty, the exact compensation due Claimant. Therefore, we direct the parties to do so from an examination of the records.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 31st day of March 1971.