

Award No. 18523

Docket No. SG-18999

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
THE WASHINGTON TERMINAL COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Washington Company that:

The Washington Terminal Company should justly compensate Mr. V. L. Lishear for attending the investigation and the three days' suspension he served and any notation on his service record should be removed as a result of the investigation held September 9 1969.

(Carrier's File: V. L. Lishear, Maintainer. Discipline Appeal)

OPINION OF BOARD: The Claimant was notified by letter dated August 20, 1969 to report for an investigation of charges made against him on August 26, 1969. A similar notice to appear on that date was sent to Messrs. Gebhardt and Hodges as witnesses to the event which occurred on August 18, 1969.

On August 21, 1969 Mr. Gebhardt notified the appropriate Carrier representative that he would be unavailable on August 26. Accordingly, the hearing was re-set for September 9, 1969, and all parties, including the claimant, were so notified.

The Organization protested at the hearing that the investigation was untimely, since the hearing was not held within seven days from the date of charge and that the three day suspension served by the Claimant for his actions on August 18 was improperly levied by the Carrier for the sole reason that the seven day time limit of Article 6 Section 1 had been violated by a unilateral extension of the date for hearing beyond this limit.

The Carrier extended the date for hearing on the dual premise that a fair and impartial investigation could only result if the claimant could confront his accuser, and that Gebhardt's notification that he would not be available on the first date selected made postponement of the investigation necessary, and the Claimant's failure to object was tantamount to a mutual agreement to waive the seven day rule.

There is much to be considered in weighing the absolutes of time limits negotiated by the parties in the several steps of a grievance procedure, particularly in discipline cases where the overriding factor is to insure fair and impartial examination of the charge against the employe, the evidence adduced in support of the charge, and the unimpeded opportunity for the employe to offer his defense.

However, in the face of a recent award (No. 17167, Referee James R. Jones) in a parallel case involving the same Organization, it seems unnecessary to examine and dispose of these considerations as they affect the instant case. The facts are the same and this Board can find nothing in the record of the case before us to distinguish it from the decision in Award No. 17167, from which we quote in pertinent part:

"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."

This Board concurs with the conclusions reached by Referee Jones and considers them controlling here.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1971.

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