



Award No. 18872

Docket No. TD-19043

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as "the Carrier" violated the Agreement currently in effect between the parties, Rule 46 thereof in particular, by its action in assessing discipline in the form of thirty (30) days' actual suspension from service upon Train Dispatcher C. M. Olson following formal hearing held on November 17, 1969. The record of said hearing fails to support Carrier's charge of alleged rules violation by Claimant, evidences disregard of Claimant's right to fundamental due process and supports the Employees' contention that Carrier's action was arbitrary and unwarranted.

(b) Carrier shall now be required to compensate Claimant for wage loss sustained, and to clear his employment record of the charges which provided the basis for Carrier's action.

(c) Compensation claimed in (b) above shall be subject to the payment of interest thereon at the maximum rate allowable under the Statutes of the State of Minnesota.

OPINION OF BOARD: This is a discipline case. At the time of the incident which led to a 30 day suspension of Claimant he was a train dispatcher in the Carrier's Austin, Minnesota train dispatching office.

Claimant received a notice dated November 11, 1969 which reads as follows:

"Formal investigation will be conducted in the Superintendent's Office, Austin, Minnesota, 8:30 A.M., Monday, November 17, 1969 for the purpose of establishing cause and to place responsibility for the alleged failure to properly issue train orders in connection with the movement of Extra 1008 East and Extra 596 West on October 17, 1969."

The investigation was held and Claimant was suspended from the service of the Carrier as we noted above.

In its submission to this Board the Organization argued that the notice quoted above did not conform to the requirements of Rule 46 (b).

"RULE 46 (b)
HEARINGS

A train dispatcher charged with, or involved in, an offense which might result in discipline, demotion or dismissal from the service of the Carrier, shall be advised in writing of the precise charge at the time he is notified to appear at the hearing. Such hearing shall be held by the Superintendent or Assistant Superintendent within ten (10) days after the date of the notice, or within ten (10) days after a train dispatcher may have been suspended from service, whichever date shall be the earliest. The decision shall be rendered within twenty (20) days from the date of the close of the hearing."

In particular the Organization alleges that the requirement that the "precise" charge be set forth was not met.

We have held many times that it is not necessary that the rule which a claimant allegedly violated be set forth in the notice. The test is whether the notice is sufficient to fairly apprise the Claimant of the nature of the offense charged so that he can adequately defend himself. In the case at bar the notice contained the date, the trains involved and the fact that the offense allegedly committed was the failure to properly issue train orders. This appears to be fairly specific. Taken together with the transcript of the hearing above wherein it is obvious that the Claimant attended the hearing with full knowledge of what the offense was there can be no other finding by this Board than that the notice given was sufficient.

The record substantiates the findings on the property as to the violation by the 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.

DISSENT TO AWARD 18872
DOCKET TD-19043
REFEREE FRANDEN

The controlling agreement, Rule 46 (b) states:

"* * * shall be advised in writing of the precise charge at the time he is notified to appear * * *"

The Majority held:

"This appears to be **FAIRLY** specific." (Emphasis ours.)

The Rule does not allow for **DEGREES** of preciseness or specificity. For the benefit of the Majority, 'precise' is defined as "strict, accurately stated, definite, and with no variation."

The Board had the full transcript of the investigation before it. At the very beginning of the investigation the Claimant's representative tried to clarify why and for what purpose was Claimant present and what was the charge. The conducting officer asked Claimant what duties were assigned to him and all he knew of the circumstances leading up to and including the alleged mishandling of train orders involving the movement of Extra 1008 East and Extra 596 West. Reading this broad, fishing-expedition type question, one would guess that the notice was "**FAIRLY**" precise.

When all of the patient's organs cease to function, would the doctor announce that the patient is **FAIRLY** dead!

The Board in Award 18872 not only rewrote the agreement, but rewrote Webster's dictionary.

For this and other reasons, this dissent is registered.

George P. Kasamis
G. P. Kasamis
Labor Member