

Award No. 19143
Docket No. SG-19191

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company (Lines West of Buffalo) that:

(a) Carrier violates time limit provisions of Rule 51(b) of the current working Agreement when Carrier assessed Signal Maintainer F. D. Pollard with thirty (30) days actual suspension and disqualified him from holding the position or Classification of Leading Signal Maintainer, such suspension and disqualification in connection with a hearing conducted in Terre Haute, Indiana, on November 6 and 7, 1969, and Rule 51(b) is here quoted:

"Rule 51(b): The hearing shall be held within 14 calendar days after the date when charged with the offense or held from service and a decision shall be rendered within 14 calendar days after the completion of same."

(b) Carrier now be required, as the result of the violation of Rule 51(b) as referred to in (a) above, to restore Signal Maintainer F. D. Pollard to service of the Carrier and make him whole for all time lost commencing December 13, 1969, inclusive, and continuing through January 11, 1970, unless he is restored to service before the latter date, and clear his personal record of any charges or any disqualification as referred to in the letter of December 11, 1969.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute, bearing an effective date of March 1, 1951, which, as amended, is by reference thereto made a part of the record herein. As indicated by our Statement of Claim, this is a discipline case; therefore we quote here for ready reference the discipline rule:

"RULE 51.

Discipline and Grievances: (a) Except as provided in Rule 23(c) of this agreement, no employee who has been in service covered by this agreement for 90 calendar days or more shall be disciplined without a fair hearing by a designated official of the carrier. Suspension in proper cases pending a hearing shall not be deemed a violation of this principle. At a reasonable time prior to the hearing he shall

Yours very truly,

/s/ E. Gibson
Superintendent-Labor Relations
and Personnel
PENN CENTRAL
TRANSPORTATION COMPANY"

(Exhibits not reproduced.)

OPINION OF BOARD: On October 28, 1969 there was a rear end collision at Mile Post 116.22 near Charleston, Illinois, between trains THM 2 and MP 8 at about 4:05 P. M., CST.

As a consequence of the collision, several employes, including the Claimant F. D. Pollard, were requested by Carrier to attend a "formal investigation-trial to be conducted at Herre Haute House, Terre Haute, Indiana, at 9:00 A. M., CST, Thursday, November 6, 1969, to develop the facts and determine your responsibility, if any for rear end collision at M.P. 116.22 near Charleston, Illinois, between trains THM 2 and M.P.-8 at about 4:05 P. M. CST, October 28, 1969"

Claimant testified at the trial-investigation held on November 6 and 7, 1969, and it was not shown that he had any responsibility for the false clear signal of October 28, 1969.

However, the evidence did disclose that Claimant, when shooting trouble at Charleston, Illinois about three years before, had used faulty techniques in analyzing trouble in testing to ascertain the cause of trouble and in correcting the trouble.

On November 20, 1969, based on what it learned during the trial-investigation on November 6 and 7, 1969, Carrier wrote Claimant under date of November 29, 1969 asking that Claimant attend a hearing on December 1, 1969 * * * "to develop the facts and determine your responsibility, if any, for improper performance of your duties while shooting signal trouble at Charleston, Illinois, interlocking approximately three years ago, as revealed in testimony at trial-investigation held at Terre Haute, Indiana, on November 6 and 7, 1969 * * *."

At the hearing on December 1, 1969 there was made a part of the record of said hearing portions of the transcript of the trial-investigation of November 6 and 7, 1969. Carrier's first knowledge of improper performance by Claimant, which performance had occurred three years before, came from the testimony of Claimant at the trial-investigation of November 6 and 7, 1969.

The Organization in its rebuttal contends that the only plausible reason that Carrier held a second hearing was to give Carrier a chance to take another shot at Claimant Pollard because it failed to assess discipline against Claimant within 14 calendar days after completion of the November 6 and 7, 1969, hearings as required by Rule 51. We disagree with this contention of the Organization. When Claimant attended the November 6 and 7 hearings he was on notice only that they dealt with the rear end collision of October 28, 1969. He was not on notice that he should be prepared to defend conduct of his that occurred three years before and had Carrier disciplined Claimant within fourteen days after the November 6 and 7, 1969 hearings without giving Claimant a further hearing it would have been in violation of the contract.

We further disagree with the Organization's assertion that Carrier did not apprise the Claimant properly of the charge against him. The charge even

made reference to the events Claimant had discussed "in testimony at trial-investigation held * * * on November 6 and 7, 1969 * * *."

Claimant was officially notified under letter dated November 20, 1969, to attend a hearing on December 1, 1969 "to develop the facts and determine your responsibility, if any, for improper performance of your duties while shooting signal trouble at Charleston, Illinois interlocking approximately three years ago, as revealed in testimony at trial-investigation held at Terre Haute, Indiana, on November 6 and 7, 1969 * * *". Even if this notice could have been more artfully drawn, it is adequate if it comports with the standard of reasonably apprising an employe of what circumstances are to be under scrutiny so that he will not be surprised. We think the notice meets this traditional standard.

We do not believe the Carrier violated Rule 51(b) which as follows:

"The hearing shall be held within 14 calendar days after the date when charged with the offense or held from service and a decision shall be rendered within 14 calendar days after the completion of same."

Claimant was charged on November 20, 1969 and the hearing was held on December 1, 1969, which was certainly within 14 calendar days after the charge. On December 11, 1969, Claimant was advised of the decision to suspend and disqualify him for thirty days as a Leading Signal Maintainer, which decision was within 14 days after the December 1, 1969 hearing. We therefore find no violation of the 14 day requirement of Rule 51(b).

We think, notwithstanding the arguments of the Organization, that Claimant was given fair treatment, that Carrier proved that Claimant had, failed to perform his duties, that we should not interfere with disciplining measures when they are reasonable as in this case and that there has been no violation of the Agreement.

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 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 21st day of April 1972.

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