

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19423
Docket Number CL-19431

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7007)
that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it failed to give Mr. Glenn E. Thompson written notice of precise charge against him at a reasonable time prior to date set for investigation; and,

(b) The Southern Pacific Transportation Company shall now be required to clear Mr. Thompson's record respecting sixty (60) demerits assessed against it following investigation held in violation of Agreement; and,

(c) The Southern Pacific Company shall now be required to compensate Mr. Thompson for five and one-half (5-1/2) hours October 23, 1970, and for eight (8) hours compensation on each date October 26, 27, 28, 29, 30, November 2, 3, 4, and 5, 1970.

OPINION OF BOARD: The record in this case is less than satisfactory, and for this both parties bear a measure of responsibility. If a claimant has attempted to evade notice of investigation he will not be heard to complain of its lack. However, on this record, no such attempt is made out.

Rule 47 of the Schedule Agreement provides:

"At a reasonable time prior to the investigation the employe shall be given written notice of the precise charge against him and given reasonable opportunity to secure the presence of necessary witnesses."

Claimant received the notice on the day of the hearing. Absent circumstances not present here this does not constitute notice at a "reasonable time" nor did it give him "reasonable opportunity to secure the presence of necessary witnesses".

It is clear that Claimant had time to telephone Carrier after receipt of the notice. Instead he proceeded directly to the place of the hearing and arrived either one half hour after the appointed time or one hour after that time, depending on which version is correct. Although use of the telephone would have

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been more efficacious, Claimants action in going directly to the hearing upon receipt of the notice is entirely inconsistent with an attempt to avoid notice or delay the hearing in order to improperly take advantage of the rule that the hearing must be held within ten days of disciplinary action.

Since Claimant was not given notice of the investigation, as provided by Rule 47, the claim must be sustained in its entirety.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E A Tuller
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1972.