

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19642
Docket Number MW-19599

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Green Bay and Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The suspension of Section Foreman B. J. Shemanski from November 11, 1970 through November 20, 1970 was improper, without just and sufficient cause, on the basis of unproven charges and based upon charges other than those placed against him.

(2) The personal record of the claimant be cleared of said suspension and reimbursement be made for wage loss suffered in accordance with Section 24 of Article IV.

OPINION OF BOARD: Claimant, a section foreman, was suspended for ten days following an investigation of a derailment of an engine in his assigned section territory.

Following the investigation, Claimant received a letter from the Carrier suspending him for failing to properly inspect the track "as provided in the General Instructions for Carrying Out Track Work", which is Rule 217. A review of the transcript of the investigation reveals that Claimant was questioned with respect to alleged violations of Rules 8 and 446. There was no mention of Rule 217 at the investigative hearing or at any time prior to the suspension.

It is fundamental to the disciplinary process under the Agreement that Claimant be permitted to defend himself against the charges by Carrier; this is patently impossible if he is not apprised of the precise violation attributed to him. Taking the letter of suspension and the record of the investigation together it is clear that Claimant was not afforded due process.

In Award 14778 we said:

"...No man can defend himself against a charge to him unknown. Certainly it is not due process to shovel anything and everything into a record and leave to the uninhibited hearing officer finding what misconduct he feels the employee has committed. Issue must be joined before hearing."

We have followed the principle that an employee must know what Rule he is alleged to have violated so that the investigation affords him elementary due process in a number of other Awards including 16740 and 19357. In this case, we concur.

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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, 1937;

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 Award Division

ATTEST:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.