

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19784
Docket Number CL-19947

C. Robert Roadley, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company
((Involving employees on lines formerly operated
by the Wabash Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7221)
that:

(1) Carrier violated the provisions of the Schedule for Clerks, effective May 1, 1953, when following investigation held on December 20, 1971, it arbitrarily, capriciously and unjustly assessed a thirty (30) day suspension from service against Clerk J. R. Grubb.

(2) Claimant shall now be paid for all time lost as a result of Carrier's unjust action.

(3) In addition to the amounts claimed above, the Carrier shall pay Claimant an additional amount of eight (8) per cent per annum, compounded annually on the anniversary of this claim.

(4) Carrier shall further be required to remove and expunge the record suspension dated December 27, 1971, of thirty (30) days and shall forthwith clear Claimant's record of all charges.

OPINION OF BOARD: In support of its position in this case Petitioner alleges that the Carrier notice of hearing, dated December 10, 1971, was inadequate and vague; that Claimant was not afforded a fair and impartial hearing; that Claimant's procedural right of appeal was blocked; and, among other assertions, that the time limit provisions of Rule 28 (b) were violated.

Carrier's notice of hearing, referred to above, stated, in pertinent part, as follows:

"Arrange to report ***** for an investigation to be held to determine the facts and fix the responsibility, including yours, if any, in connection with your alleged failure to properly prepare Hours of Service Adjustment Report for Displaced Persons - Amtrak Protection Agreement Report in the proper manner as ordered ***** by your alleged failure to list numerous entries from enginemen's timeslips covering the period May 1, 1970, to August 28, 1970."

Said notice specified the date of investigation to be December 20, 1971, the originally scheduled date having been postponed at the request of the Organization.

We find that this notice of hearing was neither inadequate nor vague in that it advised claimant as to the type of incident to be investigated, the dates when the incident is alleged to have occurred, and that the charge was sufficiently distinct to advise claimant so that he could properly prepare his defense. See Awards 14581 and 18128 in support of the foregoing conclusion.

The record before us also shows that the claimant's procedural rights of appeal were not blocked, as alleged, in that no written request for appeal hearing was received by the Carrier, as specifically called for in Rule 28 (b) of the Agreement. What the Carrier did receive, in this regard, was a letter from the local chairman, dated December 31, 1971, appealing Carrier's decision following the investigation and merely stating, in pertinent part, "**** We feel Mr. Grubb should be called back into service and paid for his time lost, or set a time, date and place to discuss same." (Emphasis added).

Further, a thorough review of the transcript of the investigation indicates that there was substantial evidence to show that some discipline was warranted. However, in view of the employee's long service with the company (23 years) we feel that the discipline imposed was excessive, and that a suspension from service for a period not in excess of fifteen days would have been commensurate with the offense. Insofar as part 3 of the claim is concerned, there is nothing in the Agreement that provides for the payment of interest.

In view of the foregoing, we will sustain the claim to the extent of allowing pay for time lost in excess of fifteen (15) days and deny the claim in all other respects.

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 Employee involved in this dispute are respectively Carrier and Employee 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 discipline imposed was excessive.

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Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1973.