

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20428  
Docket Number CL-20505

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7429) that:

1. The Carrier violated the Clerk's Agreement, when it suspended Clerk E. Vokral from actual service 12:01 A.M., October 1, to 12:01 A.M. October 6, 1972.

2. Claim that Clerk E. Vokral was not advised of the precise charge against him as required of Rule 25 of the agreement between the parties.

3. Claim that the investigation and decision resulting therefrom suspending him from service was therefore null and void.

4. Claim that Clerk E. Vokral be compensated the exact amount of his losses, or any and all wage losses sustained, plus interest at the current rate, on the amount of reparations due.

OPINION OF BOARD: Rule 25 states, in pertinent part:

"An employe, charged with an offense, shall be furnished with a letter stating the precise charge at the time the charge is made...." (underscoring supplied)

After a thorough review of the record, the Board determines that the single issue presented for our determination is whether or not the September 25, 1972 Notice of Investigation satisfied the above cited Rule. The Notice stated:

"Arrange to report to the Superintendent's Office, General Office Building, 6900 South Central Avenue, at 9:30 A.M. on Thursday, September 28, 1972 for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with you calling and placing Yardman P. Robertson on the 3:00 P.M. West Sub-Office switchtenders assignment on September 16, 1972 without sufficient time off duty for this assignment."

"If you desire a representative, please arrange."

Claimant contends that the Notice was improper because:

"In the instant dispute, Carrier's notice falls far short of being a clear and precise charge. It instructed Claimant to report for a hearing 'for the purpose of ascertaining the facts and determining your responsibility, if any.' It does not say to Claimant that it thought him guilty of an offense. On the contrary, the notice says, in effect, that the Carrier does not know who is responsible but intends to find out. In short, the effect of the notice was to tell Claimant that he would participate in a general inquiry rather than a trial."

Initially, we cite with favor Award 17837:

"That letter charged the Claimant with 'apparent violation.....'. The letter is not vague. The charge is adequately precise. Certainly, it is more reasonable to advise the Claimant of an 'apparent' violation. The evidence at the Hearing determines whether there was or was not a violation of the rule."

A Notice of Investigation is not a criminal complaint, nor is it designed to be a basis for technical loopholes and/or legalistic avoidance. Nonetheless, a Notice must advise a Claimant that he is subject to investigation for a dereliction of duty, and it must afford an opportunity to prepare a defense against the accusation. In short, a Claimant may not be misled by the Notice. See, for example, Awards 12898, 13969, 16344, 16637 and 17154.

While Claimant did contend, at the investigation, that the Notice did not specify any charge, the record fails to show that the Notice violated the guidelines stated in the Awards cited above.

In this regard, we have fully considered Award 18606 concerning these same parties, and interpreting the same Rule 25. The Notice of Investigation under consideration in that Award was certainly no more specific than the Notice here under review. Citing a number of the Awards mentioned herein, the Board concluded that the Claimant was clearly advised of the specific or "precise" charge against him.

We are unable to find that Claimant did not understand the nature of the charges; that he was misled or prejudiced; or that he was not able to prepare a defense. Further, we are unable to state that Award 18606 is palpably erroneous. We will deny the claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.