

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20560
Docket Number SG-20135

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the Kansas City Terminal
Railway Company:

(a) Carrier violated the Signalmen's Agreement when it
improperly suspended and improperly charged Traveling Signal Maintainer
C. G. McKay for an alleged offense allegedly occurring on December 7
and 8, 1971.

(b) Carrier should reimburse C. G. McKay for expenses he
incurred in connection with the Investigation, and pay him for all time
lost resulting from the 30 days suspension. Carrier should also be
required to clear Mr. McKay's record of the charges and suspension.
[Carrier's File: SG-2.72.30]

OPINION OF BOARD: The Claimant, following formal investigation, was
found guilty of violating Rules O, I and L of the
Carrier's Rules and Regulations and assessed 30 days actual suspension.

Procedurally, the Organization contends that the Carrier did
not charge the Claimant with a "precise charge" as required by Rule
701(c). Further, the Organization contends that the contents of Rules
O, I and L are not properly before this Board.

The Carrier contends that the Claimant was properly charged;
and that the Claimant admitted during the investigation that he was
familiar with "Rule O", the rule under which he was charged.

Rule 701(c) states in part:

"The employe alleged to be at fault shall be
apprised in writing of the precise charge or charges
...."

The Carrier's charge [Carrier's Exhibit 1] reads as follows:

"You are being charged with possible violation of Rule O
of the Kansas City Terminal Railway Company Book of Rules and
Regulations during your tour of duty on Tuesday and Wednesday,
December 7 and 8, 1971, and any other rule violation which
may be determined in the investigation."

The Carrier's findings [Carrier's Exhibit 3] read as follows:

"After reviewing contents of the formal investigation, the evidence presented indicates that you were guilty of violating Rule O of the Kansas City Terminal Railway Company Rules and Regulations. By your refusal to answer questions put to you in connection with violating Rule I, you are found guilty of violating Rules I and L of Kansas City Terminal Railway Company Rules and Regulations. You are hereby suspended from service for a period of 30 calendar days, beginning December 8, 1971, through January 6, 1972, inclusive."

Nowhere in the charge against Claimant [Carrier's Exhibit 1, above] or in the transcript of the investigation were the possible violations of Rules I and L brought up. Yet the Carrier in its findings letter quoted above [Carrier's Exhibit 3] found the Claimant guilty of violating Rules I and L, in addition to Rule O. We thus find that the charge was "not precise" and in violation of Rule 701(c) of the Agreement of the parties.

Further, nowhere is the language of Rules O, I or L presented to this Board by the Carrier. Fundamental fairness requires that this Board study the rule or rules under which Claimant was disciplined as well as the evidentiary record in order to judge whether the evidence conforms to and relates to the violation of the specific rules. This Board is left to speculate concerning the contents of Rule O as well as Rules I and L; and this we cannot do. The Carrier has the burden of proof in discipline cases to demonstrate that it has proven its charge at the investigation and that its decision was not unreasonable. Inherent in its burden of proof is the presentation to this Board of the contents of applicable rules alleged to have been violated.

We thus will sustain the claim. Since there is no showing of expenses incurred in connection with the investigation, the segment of the claim asking for such expenses is rejected. Further, under Article X of the November 16, 1971 National Agreement, the Carrier may deduct any outside earnings from pay due Claimant for lost time.

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 as outlined in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.