

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20670
Docket Number CL-20570

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employees
(
(The Central Railroad Company of New Jersey
((R. D. Timpany, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7496), that:

(a) Carrier violated the Clerks Agreement, with particular reference to Rule No. 37, when they assessed 12 days suspended discipline against Mr. J. Bakewell, 5 days actual suspension against Mr. R. Maurer and 20 days actual suspension against Mr. J. Lore, as a result of hearing and investigation held on November 9 and 10, 1972 and also failed to allow compensation for November 9 and 10, 1972, and

(b) Carrier shall be required to compensate Messers. J. Bakewell, R. Maurer and J. Lore a day's pay, at the going rate of their regular assignments, for November 9, 1972 and a day's pay for November 10, 1972, and

(c) Carrier shall be required to compensate Mr. R. Maurer a day's pay at the going rate of his regular assignment, for November 18, 21, and 22, 1972; and a day's pay at the punitive rate for any day he would have been worked on his rest days or would have doubled if he had not been held out of service, and

(d) Carrier shall be required to compensate Mr. J. Lore a day's pay at the going rate of his regular assignment for November 18, 21, 22, 23, 24, 25, 28, 29, 30, December 1, 2, 5, 6, and 7, 1972; and a day's pay at the punitive rate for any day he would have been worked on his rest days or would have doubled if he had not been held out of service, and

(e) Carrier shall be required to rescind the 12 day suspended discipline assessed against Mr. J. Bakewell, and

(f) Carrier shall be required to enter into a joint check of Carrier's records with the Organization, to determine the dates Messers. R. Maurer and J. Lore would have been worked on their rest days and the dates they would have doubled, if they had not been held out of service, and

(g) Carrier shall be required to clear Messers. J. Bakewell's, J. Lore's, and R. Maurer's records of all alleged charges and allegations which may have been recorded thereon, as a result of the alleged violation named herein.

OPINION OF BOARD: The only question before the Board in this claim is whether Carrier afforded Claimant's notice and investigation as provided by Rule No. 37. They contend that Carrier did not comply with the Rule because the notice was not received by them a reasonable time prior to the hearing and they were not apprised of the precise charge against them.

The notice was received by them only one day prior to the hearing. Claimants and their representative appeared and objected to the notice. The objection asked for dismissal of the charges. No request for continuance of the hearing was made. A request for continuance, along with the factual basis for it, would have been the expected response if the notice presented an actual problem of preparation. The transcript of the investigation indicates that Claimants were as prepared for the investigation as they would have been if it had been held at a later time.

The adequacy of the notice has also been challenged, as it has been in many cases before the Board. The trend of decision clearly shows that the Board has considered notice adequate if it informs the Claimant of the incident under inquiry in a manner which permits him to prepare a defense without the element of surprise. In the event he is surprised the correct way to meet that eventuality is to request a continuance. The notice here was sufficient. Claimant did not claim surprise or request a continuance.

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.

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Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.