

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20681
Docket Number MW-20791

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company

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

(1) The dismissal of Hoisting Engineer G. C. Jennings was arbitrary, without just and sufficient cause and wholly disproportionate to the offense allegedly committed by the claimant. (System File MW-FTW-73-102)

(2) The Carrier failed to fix a date for an investigation within the ten day time limit stipulated within Rule 22(a).

(3) Claimant be reinstated with all seniority and vacation rights unimpaired and be made whole for all wage loss suffered all in accordance with Rule 22(e).

OPINION OF BOARD: Claimant was dismissed from Carrier's service after an investigation which showed that he had falsified his expense account for the months of October and November, 1972.

He was charged with the same offense for the month of April, 1972 and was suspended following an investigation which took place on that charge on January 18, 1973.

The Organization asserts that the investigation of the October - November period did not comply with Rule 22 (a) of the Agreement. That Rule provides that "The date for the investigation shall be fixed within ten days after the date charged with the offense or held from service."

Claimant was charged with the offense in a letter dated March 6, 1973 which reads:

"You are hereby charged with having falsified your expense account (Comp. 119) for the months of October and November, 1972, as they concern your motel expenses.

"A hearing will be held on the above charge in the Conference Room, Fort Wayne Division Office, 8111 Nelson Road, Fort Wayne, Indiana, at 10:00 A.M., Standard Time, Tuesday, March 13, 1973.

"You may arrange to have witnesses and/or representatives present in accordance with the effective working agreements."

The hearing was held on March 13, within the period provided by the Rule. However, the Organization takes the position that a letter dated December 29, 1972 charged him with the same offense and therefore the investigation was not held within the time provided by the Rule. That position is not well taken. The December 29 letter reads:

"Your expense account for the months of October and November, 1972, have been approved in part. Payment of all lodgings are being withheld until after your hearing."

A fair reading of the letter supports Carrier's position that the hearing referred to in it does not pertain to the October and November accounts, but to the hearing on the April account. That hearing had been set for other dates and postponed.

The charge, within the meaning given that term in Rule 22(a), was made on March 6, 1973 and the investigation was conducted as required by the Rule.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.