

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21080
Docket Number SG-20811

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company that:

(a) The Carrier is in violation of the current Signalmen's Agreement in effect on the Missouri Division of the Chicago and North Western Transportation Company (formerly Chicago Great Western), in particular Rule 62, when on January 24, 1973, it disciplined Mr. T. H. Duffy thirty (30) days suspension from service effective January 11, 1973, through February 9, 1973, account of the allegation that he was responsible for the potential false proceed condition account of track relay turned over and primary battery exhausted.

(b) The Carrier now be required to compensate Mr. T. H. Duffy, the actual time lost because of this alleged violation and also clear his record of this discipline.

Carrier's File: D-9-30-27

OPINION OF BOARD: Petitioner contends Carrier's disciplinary action violated the governing discipline rule (Rule 62) because Claimant was removed from service before an investigation and before being apprised of the charges against him. However, Rule 62 (a) expressly states that an employe may be held out of service pending investigation. This rule also clearly indicates that Claimant was not entitled to an investigation unless he made written request for same. Claimant made such request, and it was only upon receipt of this request that Carrier was required by Rule 62 (a) to apprise Claimant of the charges. Petitioner also refers to Claimant's testimony at the investigation that he received notice of the charges approximately 23 hours before the investigation began, whereas Rule 62 (a) states an employe "shall be apprised of the charges preferred against him at least forty-eight (48) hours prior to the investigation...." At the commencement of the investigation, however, Claimant stated he had been properly notified of the investigation and was ready to proceed. Neither he nor either of the two Organization representatives present at the proceeding requested postponement of the investigation. Petitioner advances certain other procedural contentions, none of which is sound.

As to the merits of this dispute, the evidence supports Carrier's conclusion that Claimant signal maintainer failed to properly maintain his territory, thus giving rise to the charges preferred against him. We are unable to say that the penalty assessed against Claimant constituted an abuse of Carrier's discretion.

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1976.