NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22047
THIRD DIVISION Docket Number CL-21880

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Consolidated Rail Corporation
(Former Pennsylvania-Reading Seashore Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8247) that:

(a) The Carrier violated the Rules Agreement, effective January 1, 1945, particularly Article XXIV, when C. M. Crelier, regularly assigned relief block operator, Brown Tower, rest days, Saturday and Sunday, rate of pay $5.95 per hour, was improperly removed from service on Friday, July 11, 1975, given a completely unfair trial on July 23, 1975, and dismissed on July 30, 1975. Following an appeal hearing on August 7, 1975, Crelier's dismissal was changed by letter dated August 11, 1975, in that he would be restored to service on a leniency basis, provided he passed the physical examination of the Company Medical Examiner.

(b) C. M. Crelier shall now be compensated for all time lost between July 11, 1975 and August 18, 1975, the first day he would have been available for service, a total of 26 days of lost time.

OPINION OF BOARD: Claimant entered service of Carrier in 1940 and at the time this claim arose was employed as Block Operator, Brown Interlocking Station. The record shows that Claimant was not getting along with fellow employes and filed a complaint against a train dispatcher with Rules Examiner Gorman. Mr. Gorman observed the operation on July 2, 3, 9 and 10, 1975 following which Claimant was removed from service and handed a letter dated July 11, 1975 reading as follows:

> "Notification is hereby given that you will be held out of service beginning 2:17 p.m., Friday, July 11, 1975, pending trial and decision in connection with:

'Violation of Rule 400 N-11, Current Book of Rules for Conducting Transportation, by reason of insubordinate acts while on duty as Block Operator Brown Interlocking Station, Thursday, July 10, 1975, and incidents effecting operation of Brown Interlocking Station during tour of duty July 10, 1975.'

You will be advised subsequently the specific charge or charges on which you will be tried." /Emphasis added/

Also, under date of July 11, 1975, Claimant was sent a "Notice of Trial or Investigation" reading as follows:

"Violation of Rule 400 N-11, Current Book of Rules for Conducting Transportation, by reason of insubordinate acts while on duty as Block Operator Brown Interlocking Station, Thursday, July 10, 1975, and incidents effecting operation of Brown Interlocking Station during tour of duty July 10, 1975."

At the hearing held on July 23, 1975, Claimant's representative, BRAC Local Chairman, John Lieb, objected to going forward with the investigation on the grounds, inter alia that the Notice of Trial and Investigation was violative of Article XXIV (c) which reads in pertinent part as follows:

* * *

"Advance Notice of Trial

(c) An employee who is accused of an offense and who is directed to report for trial thereof, will be given reasonable advance notice in writing of the exact offense for which he is to be tried and the time and place of the trial...."

Specifically the Organization objected that the Notice did not specify the exact charges as promised in the letter holding Claimant out of service. The hearing proceeded over the objection of the Organization. By undated Notice of Discipline Claimant thereafter was notified of his dismissal. The dismissal, notice stated that the 'Outline of Offense' was as follows:

"Violation of Rule 400 N-11, Current Book of Rules for Conducting Transportation by reason of insubordinate acts while on duty as Block Operator Brown Interlocking Station, Thursday, July 10, 1975, and incidents effecting operation of Brown Interlocking Station during tour of duty July 10, 1975."

Subsequently in handling on the property, the dismissal was reduced to a 26-day suspension in consideration of Claimant's many years of service and positive assurance as to his future conduct.

Several issues were joined on the property and referenced in submissions to our Board but the sole question presented on final appeal was that regarding the contractual adequacy of the Notice of Investigation and Trial. Many cases have held that the technical precision of criminal indictments is not the standard required to be met by a Notice of Investigation and that contractual due process is fulfilled by a Notice which advises the employe that he is under investigation with such particularity that he has a reasonable opportunity to prepare an informed defense. See Awards 20331, 20428, 21111, 21025, 21020, 20993, and many others. We in no way reject the soundness of the principle espoused in those Awards when we hold in the peculiar facts of this case that the Notice of Investigation was fatally defective.

If read in isolation, the Notice might pass the test enunciated in the antecedent awards or at least it would be a close question whether the Notice is prima facie defective under Article XXIV (c). But in the facts of this case the Notice must be read in context with the letter of July 11, 1975 which contained the exact words later found in the Notice but concluded with the promise that "you will be advised subsequently the specific charge or charges on which you will be tried." There was no subsequent advice to Claimant which added any specificity to the charges. In our judgment, the Organization has made a colorable argument that Claimant relied to his detriment upon Carrier's representation that greater specificity would be provided before the hearing commenced and that thereby he was confused and prejudiced in his ability to defend by the Notice which failed to provide the promised specificity. In the particular facts and circumstances of this case, we must conclude that Carrier violated Article XXIV (c) and we shall sustain the claim for lost time. By so holding, we express no views on the merits of the dispute and certainly should not be understood to condone any of the actions of Claimant.

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 Employes involved in this dispute are respectively Carrier and Employes 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 to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.