NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22162
THIRD DIVISION Docket Number CL-22233

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employes
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood GL-8428, that:

"(1) Carrier violated the Agreement between the parties when it failed to give Mr. C. Boyer a fair and impartial hearing, and in abuse of discretion dismissed claimant based on charges not substantially proven and subsequently changed the dismissal to a suspension which terminated on February 7, 1977.

(2) Carrier shall compensate Mr. Boyer for all wages and other losses sustained account his dismissal and subsequent suspension from May 21, 1976 through February 7, 1977."

OPINION OF BOARD: Before any consideration can be given to the merits of this case, we must consider Petitioner's contention that the investigation was not timely held and, therefore, the entire proceeding is void ab initio.

The rule in question, Rule 26 Investigation, provides that:

> "An employee who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation. He may, however, be held out of service pending such investigation. The investigation shall be held within ten (10) days of the date when charged with the offense or held from service. A decision will be rendered within ten (10) days after completion of investigation." (Underlining ours.)

Carrier has advanced the position that in this case the time limit began to run from May 24, 1976, the date the charge was made. Carrier further contends that claimant was not actually withheld from service until May 24, 1976 when the crew dispatchers were notified to that effect.

This argument is difficult to accept based on the record before us which indicates that claimant was told by the Trainmaster at 2305 hours on May 21, 1976 that he was to go home. The Trainmaster did not say that he was to go home for that day only. He merely told him to go home. There is nothing more of probative value to be found in the record relative to the withholding of claimant from service -- no written confirmation of the fact addressed to claimant; nothing either verbal or written to the claimant on May 24, 1976. We can only conclude from this record that claimant was, in fact, withheld from service on May 21, 1976, and that the investigation was required to have been held within ten (10) days of that date. When the investigation was not held until June 1, 1976, the clear language of Rule 26 was violated. What was said in Award No. 19275 of this Division applies equally in this instance. There we find:

> "The record is clear that the investigation was not conducted within the 10-day time limitation of Article IX(b). There is no showing that the time limit was extended by Agreement between the Carrier and the dispatcher or his representative, or that the Carrier attempted to obtain such an Agreement. The Board must apply the Agreement as written, and as the procedural requirements were clearly violated by the Carrier, we will sustain the claim on this basis, without passing upon the question as to the responsibility on the part of the claimant for the accident involved. See Awards 17145, 17081, 14497, 14496, 8714."

See also First Division Award No. 20711.

In view of the time limit violation, we will sustain the claim for payment in accordance with the provisions of Rule 30 of the Agreement without passing on the merits of the discipline as assessed.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: C. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.