

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22188
Docket Number CL-22198

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8459) that:

1. The Carrier violated the effective Clerks' Agreement when it suspended Mr. D. R. Smith from its service for a period of ten days from September 26, 1976 to and including October 5, 1976, following an investigation which was held in contravention of the Agreement;

2. Carrier shall now compensate Mr. Smith for all time lost as a result of this suspension from service and shall clear his record of the charges placed against him.

OPINION OF BOARD: This is a discipline case in which claimant was assessed a ten (10) day suspension following an investigation which was held on September 15, 1976. The crux of this dispute, however, does not involve the guilt or innocence of the claimant. Rather, we are concerned here only with an alleged violation of the Rules of the Agreement which deal with the issue of time limits applicable to the handling of discipline matters, specifically Rules 25 and 26 thereof which read as follows:

"RULE 25 - ADVISE OF CAUSE

"An employe, charged with an offense, shall be furnished with a letter stating the precise charge at the time the charge is made. No charge shall be made that involves any matter of which the carrier has had knowledge thirty (30) days or more."

"RULE 26 - INVESTIGATION

"An employe who has been in the service more than sixty (60) calendar days or whose application has been formally approved shall not be disciplined or dismissed without fair and impartial investigation. He may, however, be held out of service pending such investigation only when charged with intoxication, acts of dishonesty, or acts of a very serious nature. The investigation shall be held within seven (7) calendar days of the date when charged with the offense or held from service. A decision will be rendered within seven (7) calendar days after completion of investigation. The time limits provided in this rule may be extended by mutual agreement."

The situation involved in this case stemmed from an occurrence on August 22, 1976. Originally, on August 23, 1976, claimant was notified to attend an investigation on September 8, 1976 relative to the occurrence of August 22, 1976. Subsequently on August 30, 1976, claimant was notified that the investigation scheduled for September 8, 1976 was cancelled. Later, on September 8, 1976, claimant was instructed to attend an investigation on September 15, 1976, which resulted in the ten (10) day suspension.

Petitioner has avidly argued that under the clear and unambiguous language of Rule 26 the original notice of investigation dated August 23, 1976 was defective on its face and therefore it follows that what took place on September 15, 1976 "was not a legitimate proceeding and cannot therefore have produced a legitimate result."

At first blush, this argument appears to have merit. The language of Rules 25 and 26 are indeed clear and unambiguous. The integrity and sanctity of such unambiguous rules must be preserved. However, a review of the complete record in this case causes that first blush of legitimacy to fade for we find uncontroverted evidence that claimant acknowledged his responsibility in the involved situation and initially indicated to Carrier that he would waive the investigation as first scheduled and it was accordingly cancelled. After claimant decided to "change his mind" and did not sign the acknowledgment of responsibility, the investigation was rescheduled by notice dated September 8, 1976 and the investigation was held on September 15, 1976.

Claimant, after having pursued the course which he did, cannot now successfully argue the technicality that the original notice which was voided as a result of his actions was improper ab initio.

The fact remains that there was but one investigation held and it was scheduled and held within the time limits required by both Rules 25 and 26. Therefore, the claim outlined herein must be denied.

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.

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 29th day of September 1978.