

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22277
Docket Number SG-22299

Nathan Lipson, 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:

(a) On Dec. 31, 1976 and Jan. 7, 1977 the carrier violated the current Signalmen's Agreement, particularly rule 60 (revised) during the investigation of signal maintainer Mr. D. E. Beck and subsequent discipline assessed to him.

(b) Carrier now be required to clear the records of Mr. Beck of discipline assessed which was 15 days deferred suspension for Mr. Beck. Notification of same to this office." [Carrier's file: D-9-3-30 and D-9-3-31]

OPINION OF BOARD: The Claimant was charged with responsibility for damage incurred to a track cart and power grinder as a result of a collision between such equipment and Train No. 243 Extra 6875 in the vicinity of Mile Post 229.8, west of Boone, Iowa, at approximately 10:00 a.m. on December 29, 1976, while Claimant D. E. Beck was employed as a Signal Maintainer. The Claimant received a 15 day deferred suspension for said occurrence. No argument was made to this Board that the Claimant was not guilty of dereliction of duty.

Instead, the basis for this appeal was that the procedure used to determine the discipline was inconsistent with Rule 60 of the contract. Only the first paragraph of the Rule is in issue in the instant case, and said language is as follows:

"An employe who has been in service more than thirty days will not be disciplined or dismissed without investigation, at which investigation he may be assisted by an officer of the Brotherhood of Railroad Signalmen of America, or a fellow Signal Department employe of his choice. Such investigation will be conducted by a supervising officer of the Signal Department. Prior to the

"investigation he will be notified as to the nature thereof or charges against him, if any. He may, however, be held out of service pending such investigation. The investigation will be held within seven days from date of alleged offense has reached the supervisor, except that where an employe is held out of service pending investigation same will be held within three working days from date taken out of service. The employe will be advised of supervisor's decision, in writing, within seven days after completion of investigation, with copy to local chairman."

The required investigation was held on December 31, 1976, with D. A. Kuehn, Division Engineer and A. F. Cherveney, Manager Signals Signs Communications, acting as interrogating officers. On January 7, 1977 the Carrier mailed a notice to Claimant advising that a 15 day deferred suspension had been assessed as discipline, signed by F. W. Yocum, Division Manager. The Claimant received the disciplinary notice on January 8, 1977.

There is no question that Messrs. Kuehn and Cherveney, who conducted the investigation qualify as supervising officers of the Signal Department, as is required by Rule 60. It is, however, also clear that Mr. Yocum, although a high management official of the Carrier, is not a supervising officer of the Signal Department. The Claimant contests the present discipline on two grounds: That the requirement that "The employee will be advised of (the) decision, in writing, within seven days after completion of investigation ..." was not met; and that the signatory of the disciplinary letter was not the supervising officer who conducted the hearing, so that the decision was not the "supervisor's decision" required by the Rule.

This Board feels constrained to construe the time aspect of the notification provision of the Rule in a reasonable manner. It is true that in requiring that the employe will be advised of the decision "within seven days after completion of investigation," the parties manifested the intent to provide notification within the specified time frame. However, in the instant case the Carrier mailed its decision within the seven day period, and the notice was actually received only one day later. Common sense must indicate that such performance constitutes reasonable compliance with a seven day time limit.

In Award 13219, which involved a problem similar to the present case, the Board, after citing supporting Awards, held that "...notice of the decision must be dispatched within the time limit in such manner as may reasonably be relied on to actually get the notice to the employee, and that prima facie evidence of compliance with the rule stems from the date the notice is sent, not from the date it is received." Said logic seems presently applicable, and for said reason the time limit failure argument of the Claimant must be rejected.

But the second argument made by the Claimant deserves closer consideration. The first paragraph of Rule 60 charges the Carrier to conduct a disciplinary investigation "by a supervising officer of the Signal Department", and, as noted above, it is the "supervisor's decision, in writing" that must be delivered to the charged employee. The evidence is that a letter setting forth the decision was signed, not by either of the interrogating officers, but by another management official, who was not a supervising officer of the Signal Department.

The Carrier argues that the management official who executed the letter merely transmitted the decision of the investigating officer, but there is nothing in the record to support said assertion. It is possible that Mr. Yocum actually reflected the decision of one or both of the interrogating officers, but that was not established by any evidence.

The parties to the contract specified that the investigation and decision must be made by a Signal Department official. This Board perceives said requirement to be more than a technicality, but instead something that can be of substantial value to a charged employee. There is benefit to the employee in having an official who has expertise in the field under investigation making the disciplinary decision. In any event, the contract mandates that such an official shall make the decision. X-1

It has been found above that the record fails to establish that the Carrier completely adhered to the procedural requirements of Rule 60 in making the instant disciplinary decision. On the other hand, the state of the record must lead to the conclusion that the Claimant was guilty of the offense charged, and that procedural problems aside, the discipline would stand. This Board cannot uphold the instant discipline, but neither should a procedural defect completely exonerate the Claimant. Accordingly, it is determined that while the 15 day disciplinary suspension shall remain in the Claimant's record, the Claimant must be made whole for any wages lost.

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 violated.

A W A R D

Claim sustained as set forth 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 January 1979.

