

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22575
Docket Number CL-22302

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Chicago and North Western
(Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8509) that:

1. Carrier violated the current Agreement Rules, particularly Rule 21, when under date of January 19, 1974 it issued two (2) notices wherein Mr. M. D. Kugler, clerical employe at Madison, Wisconsin, was dismissed from service of the company account of two (2) investigations held on January 15, 1974.

2. Carrier shall be required to reinstate Mr. M. D. Kugler on his regular position with all rights unimpaired, and compensate him for all time lost from January 19, 1974 forward, until such time as the violation is corrected, with reparations to include all fringe benefits provided for in the effective contracts.

OPINION OF BOARD: Claimant worked as a Car Clerk in Madison, Wisconsin. On New Year's Eve 1973 (December 31, 1973 - January 1, 1974) he was assigned to work regular hours 6:00 p.m. to 2:00 a.m. He reported for work at 6:00 p.m. but only worked until 9:45 p.m., at which time he left the property without permission. The record indicates that he spent the balance of that night celebrating the New Year. On his subsequent time cards, however, Mr. Kugler claimed a full eight hours' pay for that tour of duty.

His absence from the work area was discovered at approximately 10:30 p.m. and it was confirmed that he did not return to work for the balance of that tour ending at 2:00 a.m. January 1, 1974.

Under date of January 6, 1974 Claimant was notified to report for investigation on January 7, 1974 into the following charges:

"Your responsibility in connection with your failure to properly perform your duties on December 31, 1973 in that you did not IDP report Train No. 569 and also IDP the new loads for December 31, 1973 while you were assigned Job No. 014 on December 31, 1973 at Madison, Wisconsin."

On January 7, 1974 Claimant was given another notice of investigation into another charge reading as follows:

"Your responsibility in connection with your failure to work your assigned hours on Position 014 on December 31, 1973 as bulletined."

In that second notice Carrier also advised Claimant that both hearings would be postponed until January 9, 1974. Claimant thereupon requested a further postponement of the hearing and was granted the further extension. At the hearing which was held on January 15, 1974 Claimant in effect admitted that he was guilty as charged. Upon review of the transcript and his personnel record, which included prior five day and sixty day suspensions for failure to protect his assignment, Claimant was dismissed from service.

The claim is before us strictly on technical or procedural grounds. There is no question of Claimant's guilt nor, given the nature of the offense and his past discipline record, can the penalty be deemed excessive. The only question is whether Carrier violated Rule 21 by failing to provide timely hearing. In the particular facts of this case we cannot find such a violation. The hearing was scheduled for January 7, 1974, well within the seven day time limit of Rule 21. We are not persuaded that a two day postponement by Carrier vitiates that proper notice and renders the whole process invalid, particularly since Claimant himself requested and was granted an additional one-week postponement. The manifest purpose of the timely hearing request is to avoid the trial of stale cases where evidence and recall by witnesses may wither with time. Balanced against this is the accused employe's right to adequate time to prepare a defense. We believe Claimant received everything to which he was entitled under the particular facts of this case and within the meaning of Rule 21. See Awards 19177, 21921 and 21289.

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:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.