

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23459  
Docket Number TD-23030

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier") violated the current Agreement (effective July 1, 1976) between the parties, Rule 24 thereof in particular, when the Carrier failed to give Train Dispatcher K. D. Shreffler (hereinafter referred to as "the Claimant") an investigation within seven calendar days as provided in the Agreement and when the Carrier applied thirty (30) days' suspension, without pay, to the Claimant based upon the investigation held on April 27, 1978. The record, including the transcript, fails to support the discipline assessment made by the Carrier and/or establish guilt on the part of the Claimant. The imposition of the discipline of thirty (30) days' actual suspension was, therefore, arbitrary, capricious, unwarranted and an abuse of managerial discretion.

(b) The Carrier shall now be required to compensate the Claimant for all losses sustained as a result of this action in accordance with Rule 24(c) and clear the Claimant's personal record of the charges which allegedly provided the basis for said action.

OPINION OF BOARD: Claimant, K. D. Shreffler, was assessed a thirty (30) day suspension based upon an investigation held on April 27, 1978. He was charged with failing to perform his duties properly on April 15, 1978.

Claimant received a notice of investigation dated April 17, 1978 advising of a formal investigation on April 19, 1978. On the same date and contained in the same envelope, Claimant received another notice dated April 17, 1978, advising that the investigation had been postponed and rescheduled for April 27, 1978. The investigation was held on April 27, 1978.

The Organization contends that the investigation was defective since Carrier did not comply with the seven (7) day time limit in Rule 24 (a) of the Agreement. As to the merits, it contends that Carrier failed to meet its burden of proving that Claimant violated some rule or instruction.

Rule 24 (a) states, in pertinent part:

"The investigation shall be held within seven calendar days of the alleged offense..."

The seven day time period commenced on April 15, the date of the alleged offense. The investigation, originally scheduled for April 19, was postponed unilaterally by Carrier until April 27, beyond the seven day limit.

At the outset of the investigation, the Organization raised its contention that Carrier failed to comply with the time limit in Rule 24 (a). Thus, the Organization's objection was timely.

This Board has held, in Award Nos. 22258 and 22898, that the rule in question is to be strictly enforced, and is not a mere guideline. The language of Rule 24(a) is clear, unambiguous and mandatory upon all parties. Investigations must be held within seven calendar days of the alleged offense, unless an extension is mutually agreed upon by the parties. Carrier's unilateral postponement of the investigation from April 19 to April 24 violated this rule. See also Third Division Award Nos. 17145, 19275, 21996 and 22682.

In view of this time limit violation, we must sustain the claim as presented without reaching the merits of this case.

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.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

*A. W. Puhler*

Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.