

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24247
Docket Number TD-23967

Irwin M. Lieberman, 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 hold an investigation on Train Dispatcher R. R. Koppelman within seven calendar days as provided in the Agreement, when the Carrier failed to give the Claimant's representative a copy of the decision in writing within seven calendar days after completion of the investigation and when the Carrier applied thirty (30) days' deferred suspension (which was later changed to actual suspension and served by the Claimant) based on the investigation held on August 30/October 2, 1979. The record, including the investigation transcripts, shows that the Carrier did violate the time limits contained in the Agreement and fails to support the discipline assessment made by the Carrier and, therefore, the imposition of the discipline of thirty (30) days' deferred suspension was 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 herein and an Operator were charged with issuing conflicting Train Orders on August 23, 1979 in violation of the special instructions issued by the Chief Train Dispatcher. The investigation of the charges commenced at 5:07 P.M. on August 30, 1979. At 8:22 P.M. on August 30th the investigation was postponed by the Hearing Officer (over the objections of Claimant and his representative) in view of the then discovered fact that the Operator was in violation of the Hours of Service Law. By notice dated September 21, 1979 the hearing was scheduled to reconvene at 10:00 A.M. on October 2, 1979. Claimant was disciplined by a Notice dated October 8, 1979.

As a threshold issue, Petitioner contends that Carrier violated the Agreement, Rule 24, in particular, by the unilateral postponement of the investigation on August 30th over the objections of Claimant's representatives. The record indicates that the Operator's representative was willing to proceed even without the presence of his principal, due to the hours of service problem.

Rule 24 provides that:

"The investigation shall be held within seven calendar days of the alleged offense or within seven calendar days of the date information concerning the alleged offense has reached his supervising officer."

Carrier maintains that there is no prohibition in the rules against postponing an investigation, nor is any time limit imposed. The time limits in the rule apply only to the initial convening of the hearing and were complied with, according to the Carrier. Furthermore, Carrier argues that the necessity to comply with federal law superseded the application of any schedule rule.

There have been a series of prior disputes between these same parties over the question of the postponement of investigations in violation of Rule 24(a), among them Awards 22258, 23459 and 23496. In those disputes this Board has held consistently that "... the time limits set forth in Rule 24(a) must be strictly enforced. They are not mere guidelines. They are procedural prerequisites to the imposition of discipline (Award 23496)." In this dispute the only differing circumstances was the hours of service law problem with one of the two principals. The Board must observe, however, that there was no requirement that the two men should have been investigated jointly. Further the postponement for a period of some five weeks seems wholly unjustified. It is this Board's continued view that under Rule 24(a) investigations must be held within seven calendar days of the alleged offense in the absence of a mutually agreed upon extension. In this dispute the peculiar circumstances, even if they had constituted an understandable mitigating circumstances, did not justify the lengthy delay. We cannot reach the merits of this matter in view of the procedural flaw; the Claim must be sustained.

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.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.