

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26719  
Docket Number MW-27066

Elmer F. Thias, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The fifteen (15) days of suspension imposed upon Section Laborer R. Garza for alleged failure to protect his assignment on January 3, 1985 was unwarranted and on the basis of unproven charges.

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant had been employed by the Carrier for a period of ten years and was assigned to a position of Section Laborer at the time of the incident here involved. He was absent from duty on January 3, 1985, telephoned his headquarters and spoke to the Superintendent about the necessity for the absence. Subsequently, the Carrier held a formal Investigation on January 24, 1985, with the Claimant charged as follows:

"...responsibility, if any, in connection with the report that you allegedly failed to protect your assignment on January 3, 1985, in violation of Maintenance of Way Bulletin No. 25."

Following the Investigation, the Claimant was assessed a fifteen day actual suspension. The Organization contested this discipline, taking appropriate appeals on the property. After those appeals were denied by the Carrier, the Organization submitted the dispute to this Board. Accordingly, the dispute is properly before us.

The Claimant was present at the formal Investigation and he was represented by a Representative of the Organization. When the Conducting Officer concluded his opening remarks during the Investigation, the Claimant's Representative objected to a continuation of the proceeding on the basis that the Claimant did not receive Notice of the Investigation. The Conducting Officer responded, in part, by entering a so-called receipt into the record as an exhibit to the transcript thereof. We have observed that the so-called receipt is a government printed form for Certified mail, that it has the Claimant's name and address printed by hand thereon but nothing indicating receipt by the Postal Department.

In its handling on the property and its appeal to this Board, the Organization takes the position that the Claimant was not notified as required by Rule 12(A) of the parties' Agreement, which reads as follows:

"(A). An employe whose application has been approved will not be suspended or dismissed without being given a fair and impartial hearing, except that, if the offense is considered sufficiently serious, the employe may be suspended pending the hearing and decision. At the hearing the employe may be assisted by duly accredited representatives of the Organization. The hearing will be held within fifteen (15) calendar days of date when charged with the offense or held out of service. Decision will be rendered within fifteen (15) calendar days after completion of the hearing. Prior to the hearing the employe will be notified in writing the specific charge against him, after which he will be allowed reasonable time for the purpose of having witnesses and such representatives of his choice present at the hearing."

When declining the appeals made to it on the property, the Carrier pointed out that a copy of the Notice of Investigation was delivered to the Claimant's home. In its presentation to the Board, the Carrier states it mailed notice of the Investigation to the Claimant's home by Certified mail. Additionally, the Carrier argues the Claimant received notice from local representatives of the Organization and that he had sufficient time to prepare a defense and to obtain representation.

Rule 12(A) provides for fair and impartial development of relevant information concerning an offense when the Carrier has reason to believe discipline should be applied. Its provisions are clear and free from ambiguity. Among others, those provisions include "...the employe will be notified in writing the specific charge against him...." When, as here, notification is specified, it is recognized as a prerequisite to the administration of discipline. Hence, the issue before us is whether the Claimant was notified within the requirements of the Rule and that issue is to be decided on the evidence contained in the record.

We have reviewed and considered the entire record and the evidence contained therein is not sufficient to substantiate the Carrier's position in the disputed matter of notification. Consequently, the discipline imposed upon the Claimant is vacated.

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 Employes involved in this dispute are respectively Carrier and Employes 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:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.