

The Third Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10249) that:

1. Carrier violated the Agreement between the parties when it arbitrarily and injudiciously assessed Clerk Mike Montalvo's record with ninety (90) days actual suspension.
2. Carrier's action was unjust, arbitrary and an abuse of discretion.
3. Carrier shall now be required to expunge the charges, record of investigation and discipline from Clerk Montalvo's personal record file and to compensate Mr. Montalvo for all wage and other loss account Carrier's action."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Prior to the occurrence giving rise to the dispute herein, Claimant, with about thirty-two years of service, was employed as a Clerk in what is referred to as Carrier's Customer Service Center at Brownsville, Texas. On December 5, 1986, Claimant was notified to attend formal Investigation on December 10, 1986:

"...to develop the facts and place your individual responsibility, if any, in connection with the report of your allegedly conducting yourself in such a manner that the Union Pacific Railroad was subject to criticism and loss of good will while you were employed as a CSC Clerk at Brownsville, Texas."

The Investigation was postponed and conducted on January 29, 1987, following which Claimant was assessed discipline of 90 days suspension from service.

A transcript of the Investigation conducted on January 29, 1987, has been made a part of the record. The transcript shows that the initial Notice of Investigation dated December 5, 1986, was corrected on December 10, 1986, as follows:

"Report to the Trainmaster's office, Brownsville, Texas at 10:00 A.M. on Wednesday, December 10, 1986, for Formal Investigation to develop the facts and place your individual responsibility, if any, in connection with the report that on November 21, 1986 you allegedly conducted yourself in such a manner that the Union Pacific Railroad was subject to criticism and loss of good will while you were employed as CSC Clerk at Brownsville, Texas."

Rule 18(b) of the applicable Agreement reads in part:

"(b) At a reasonable time prior to the investigation he (employee) shall be advised in writing of the precise charge against him and shall have a reasonable opportunity to secure the presence of necessary witnesses and representative. Carrier's charge as provided herein must be made within ten (10) days of the first date facts relating to the charge are known by or to an officer of the Carrier having jurisdiction within the administrative territory involved, and who is authorized to participate in the investigation."

In the Investigation, the Claimant's representative contended that the charge against the Claimant was not issued within the ten day provision of Rule 18(b). That contention was continued in the handling of the dispute on the property. The contention was also made that Claimant was not afforded notice of the precise charge.

The record is clear that a Carrier officer, as referred to in Rule 18(b) of the Agreement, had knowledge on November 21, 1986, of Claimant's alleged actions on that date which resulted in the charge against him. If we consider the date of December 5, 1986, the date of the original notice to Claimant, or the date of December 10, 1986, the date of the corrected notice, either date was beyond the ten-day requirement of Rule 18(b) that "Carrier's charge...must be made within ten (10) days of the first date facts relating to the charge are known by or to an officer of the Carrier..." We consider the requirements of Rule 18(b) to be mandatory. The time limit for issuing the charge could only properly be extended by agreement of the parties. The Board must apply the Agreement as written.

We also find that the notice to Claimant of

"allegedly conducting yourself in such a manner that the Union Pacific Railroad was subject to criticism and loss of good will while you were employed as a CSC clerk at Brownsville, Texas."

did not constitute a "precise charge" against Claimant. It did not specify the action complained of on the part of Claimant, such as being discourteous, indifferent, inconsiderate, uncooperative, rude or sarcastic, although many such terms were used in the course of the Investigation; neither did the notice to Claimant advise him to whom his alleged improper action or actions were directed. We consider some of these elements, or a combination thereof, to be essential to a precise charge in a case of the kind here involved. In this connection, see Third Division Award 27863 involving a somewhat similar situation.

We find that the charge against the Claimant was neither timely nor precise, as required by the Agreement. The Claim will be sustained to the extent provided in Rule 18(h) of the Agreement.

We point out, however, that numerous Awards of this Board have upheld the admissibility of written statements in disciplinary proceedings, especially from nonemployees, without the writers being present. (Third Division Awards 24704, 22618.)

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.