

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30248
Docket No. TD-30756
94-3-92-3-558

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(National Railroad Passenger Corporation
(AMTRAK)

STATEMENT OF CLAIM:

"Appeal of the September 16, 1991 decision by Transportation Superintendant G. A. Toadvine to assess Train Dispatcher T. M. Olsen a nine day suspension.

We respectfully request that the investigation be declared null and void; the discipline be vacated; that Mr. Olsen be compensated for all lost time as a result of the suspension."

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 employe 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.

At the outset, the Organization raised a procedural objection with regard to Carrier's issuance of the notice to report for a Formal Investigation on Saturday, August 10, 1991. The notice, dated August 5, 1991, and sent via registered mail, was received by the Organization on August 8, 1991, and by Claimant on August 9, 1991. Carrier then unilaterally postponed the Investigation until September 6, 1991.

The Organization points out that under Rule 19(b) of the Agreement, a charged employee and his representative must be given no less than five days notice preceding an Investigation. Further, the Investigation "shall be held...within ten (10) calendar days of the date when the employee is notified of the offenses or held from service (subject to one postponement not to exceed twenty (20) days at the request of either party, with further postponements subject to agreement)."

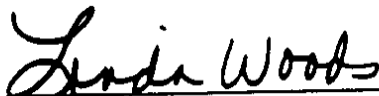
While this Board has allowed this Carrier some small latitude with respect to time limits when its action has not disadvantaged a Claimant (See Third Division Award 30071), we are in this case persuaded that the time limits were egregiously violated. The Organization argued persuasively that scheduling the Investigation on a Saturday, five days after the date of the notice, but only one day after its receipt by Claimant, clearly violates the letter and spirit of Rule 19(b) of the Agreement. Moreover, the Board concurs with the Organization that the Carrier's unilateral postponement of the Investigation until September 6, 1991, twenty-seven days after August 10, 1991, simply compounded the violation. (See Third Division Awards 24247, 23082, and 11757).

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.