

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) That the charge preferred against John H. Philligin, which was alleged to have occurred April 17, 1950, was not proven conclusively so as to establish that he was guilty beyond any doubt, and

(b) That the Carrier violated the stipulations of Rule 14 when the Station Master failed to render decision within the stipulated period of time after completion of the investigation and again violated the provisions of Rule 15 when the Superintendent failed to hold hearing and render decision within the stipulated period upon the appeal.

(c) That the record of John H. Philligin be cleared of the charge that he be reinstated and paid for all time lost as provided in Rule 17 of the Agreement between the parties.

OPINION OF BOARD: A rule requiring that an investigation be afforded to an employe who is disciplined or dismissed is designed to protect an employe against arbitrary, capricious or discriminatory action by the carrier by assuring a fair consideration of and decision upon the evidence presented to support the charges against him. The rule here provides for an investigation on written request from one disciplined or dismissed and provides in part: "A decision will be rendered within five (5) days after the completion of the investigation". That surely means and requires a decision upon the evidence presented at the investigation by the official who conducted the investigation.

Where, as here, the decision is not rendered by the official who conducted the investigation but is made by the official who preferred the charges against the employe and who acted as chief complaining witness at the investigation, it cannot reasonably be said that the employe has been afforded an investigation and decision in compliance with the rule.

Under the circumstances there is no necessity for passing upon the allegations of parts (a) and (b) of the claim, so we sustain only part (c) of the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employee involved in this dispute are respectively Carrier and Employee 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

The agreement was violated.

AWARD

Parts (a) and (b) of claim are dismissed.

Part (c) of claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.