

Award No. 17081
Docket No. MW-17655

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)

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

(1) The Carrier violated the Agreement when it dismissed Extra Gang Laborer John McIntyre from service on November 22, 1966 without giving him a fair and impartial investigation as provided for in Rule 22(a). (System File 30-20-187)

(2) The "charge" against the claimant be stricken from the record and he be allowed all wage loss sustained from November 22, 1966 through February 6, 1967 inclusive.

OPINION OF BOARD: On November 23, 1966, the Claimant was removed from service by the Carrier "for insubordination and failing to perform the services requested by the foreman or foremans [sic] in charge." Subsequently, on January 17, 1967, the Carrier held an investigation on the property which resulted in the Claimant being suspended from service for seventy-five (75) days, beginning November 23, 1966.

Section (a) of Rule 22 of the Agreement is controlling in this dispute. That section reads as follows:

"An employe who has been in service more than 30 days shall not be disciplined or dismissed without fair and impartial investigation, at which investigation he may be assisted by representatives of his choice. He may, however, be held out of service pending such investigation, and such holding from service shall not be deemed a violation of the principle of fair and impartial investigation and appeal. The date for the investigation shall be fixed within ten days after the date charged with the offense or held from service. A transcript of statements taken will be made and a copy furnished the employe or his representative upon request. Decision will be rendered within 15 days after completion of the investigation unless an extension of time is agreed to."

Since the investigation in the instant case was not conducted within the prescribed time limitations, the above provision was violated. (See Award No. 12437 with George S. Ives as Referee.) The claim will, therefore, 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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1969.