



Award Number 17525

Docket Number TE-16777

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York, New Haven and Hartford Railroad, that:

1. The Agreement between the parties was violated when and because Operator James Crowley was required to attend an illegal investigation, held in violation of Article 27 of said agreement beginning January 4, 1966 and continuing January 5 and 6.
2. The Agreement was further violated when and because Operator James Crowley was not properly notified as required by said Agreement "at a reasonable time prior to the hearing" and "he shall be apprized (sic) of the precise charge against him."
3. Operator James Crowley shall now be reimbursed for time lost eight (8) hours, January 5, plus time consumed, one (1) hour and twenty (20) minutes, January 4, one (1) hour and ten (10) minutes, January 5, and one (1) hour, January 6, all time claims made per Article 17, and his record shall be cleared of any discipline assessed in connection with these events.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties dated September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

These claims were timely presented, progressed, including conference with the highest designated officer of the Carrier and have been declined. Employees therefore appeal to your Honorable Board for adjudication.

On the dates the events occurred that gave rise to these claims, December 28 and 29, 1965, Operator James Crowley was assigned to the position as Signal Station Operator at Braintree Signal Station U-433, having gone on duty 7:00 P.M. December 28.

Shortly before or after midnight (the record is not completely clear), train described as KN-1 was being made up in the yard and two cars were derailed. It is quite evident however that operator Crowley could have no connection with this derailment. Conductor Kitchens, who was in charge of this train, shortly after the accident called operator Crowley on the tele-

As a result of this investigation Mr. Crowley was notified by letter dated January 7, 1966, that he had been found guilty of violating Rules 108 and 860 of the New Haven Operating Book of Rules and lost one day's service, namely, Wednesday, January 5, 1966, which was entered on his record as discipline.

Rule 108 of the New Haven Operating Book of Rules reads:

"In case of doubt or uncertainty, the safe course must be taken."

Rule 860 reads:

"Operators and levermen report to and receive instructions from the superintendent or his representative. They must obey instructions of chief train dispatcher, train dispatchers or train directors, also must comply with the instructions of other departments in their jurisdiction. When on duty they are responsible for the handling and delivery of train orders and telegrams to the persons addressed, for arranging the use of blocks, tracks, interlocking, switches, highway crossing devices and signals and for the prompt and safe movement of trains in accordance with the rules, train orders and special instructions.

"Operators handling commercial business must conform to the rules and regulations of the Western Union Telegraph Company as issued and instructed by the Superintendent of Communication."

Claim was initiated on behalf of Mr. Crowley for eight hours representing time lost on January 5 and three hours and thirty minutes for time spent attending the investigation on January 4, 5 and 6. The claim was progressed through the prescribed channels on the property up to and including the undersigned.

Attached in exhibit form is a copy of the investigation transcript and pertinent correspondence as follows:

"A"—Investigation transcript.

"B"—Superintendent's notification of discipline assessed.

"C"—General Chairman's appeal.

"D"—Carrier's decision.

Copy of Agreement between the parties dated September 1, 1949, as amended, is on file with your Board and is, by reference, made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Carrier served notice, dated December 30, 1965, on Claimant to be present at an investigation to be held in Carrier's Superintendent's office on January 4, 1965 "to determine your responsibility, if any, in connection with derailments at South Braintree on December 28 and 29, 1965, while you were the Operator on duty at Braintree Signal Station U-453".

Claimant received a one-day suspension from service as a result of discipline assessed against him by Carrier.

Claimant alleges that he was not notified of the precise charge against him; that the conduct of the hearing was unfair and impartial toward him; that Claimant was not charged with having violated any rule of the company nor having committed any act that could have contributed to either of the derailments; that Carrier failed to prove that Claimant was guilty of any wrongdoing.

Carrier's defenses to this claim are based as follows: (a) this Board is limited to the issues raised in the Statement of Claim, and inasmuch as the issue, as to whether Carrier proved Claimant guilty as charged, was not placed in the Statement of Claim, it may not now be considered and thus this Claim should be dismissed; (b) That Claimant's contention that Carrier failed to sustain its burden of proof is a new issue not raised on the property and thus cannot be considered by this Board in the determination of this dispute; (c) that Carrier, in its ex parte submission, argued that Claimant was not contending that he was not responsible for the derailment at South Braintree and said statement was not rebutted by the Organization, thus amounting to an acceptance on the part of the Organization as being correct; (d) that Carrier proved that Claimant was responsible for the derailment; (e) that the charge was sufficiently precise so as to comply with requirements of Rule 27 of the Agreement; (f) that Carrier is not required to call any witnesses on behalf of Claimant.

It is clearly seen that Claimant predicated his Claim on the basis that (1) he was required to attend an illegal investigation in regard to violation of Article 27 of the Agreement; and (2) that he was not properly notified at a reasonable time prior to the hearing and that he wasn't apprised of the precise charge against him. This Board has recently held in Award No. 17512, that the only question properly before this Board is that presented in the formal statement of claim. The Organization did not contend on the property that Carrier did not sustain its burden of proving Claimant guilty as charged. This is substantiated further by the Organization's failure to rebut the assertion of Carrier in its ex parte submission before this Board that Claimant was not contending that he was not responsible for the derailment. Thus, we cannot consider the contention of the Organization that Carrier failed to prove Claimant guilty as charged.

We, therefore, are relegated to considering the procedural defects raised by Claimant herein.

First, in regard to the Organization's allegation that Carrier failed to apprise him of the precise charge against him, we find that the charge made by Carrier herein was sufficient to enable him to properly prepare his defense and this contention must be denied. Second, in regard to the Claim that Claimant was not properly notified at a reasonable time prior to the hearing, we also find it to be without merit. Claimant could have requested a continuance at the hearing if he felt that he didn't receive the notice at a reasonable time prior to the hearing. Third, Claimant failed to adduce any evidence to show that the investigation was "illegal" as claimed by him. Also Carrier was under no duty to call witnesses that he wished to have testify. Therefore, we are compelled to deny the claim.

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, 2934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1969.