

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22118
Docket Number MW-22086

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(The **Alton & Southern Railway Company**)

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

(1) The suspension of **Caboose Supplyman J. W. Dace** from January 26 through February 24, 1976 was without just and sufficient cause and on the basis of unproven and disproven charges (System File A&S 1976-1/K 1638-55).

(2) Superintendent **Needham** failed to give reasons for his denial decision dated February 18, 1976.

(3) As a consequence of either or both (1) and (2) above, the claimant shall be paid for all time (**overtime and straight-time**) lost during said suspension period."

OPINION OF BOARD: We find ourselves deterred from reaching consideration of the **merits** of the January 26, 1976 through February 24, 1976 disciplinary suspension **imposed** on **Claimant** by Carrier because of contention raised by **Employes** that, in the course of appeal procedures, Carrier's Superintendent failed to state the reasons for his notification therein **that** appeal was denied.

The chronology of this matter shows that Carrier, taking cognizance of a charge by its **supervision**, that on January 15, 1976, **Claimant** was derelict in his duty as **Caboose Supplyman** by failing properly to supply a caboose alleged to have been part of his expected responsibility, **summoned Claimant** to an investigation to take place on January 22, 1976 to **determine** the facts thereon.

After investigation was concluded, Carrier's Superintendent (**Needham**) sent **Claimant**, a notification, **under** date of January 23, 1976, that his reading and study of the transcript of investigation showed **Claimant** to have failed properly to supply the caboose in question on the date involved and that as a result thereof, **Claimant** would be subjected to 30 days actual suspension January 26th through February 24, 1976 inclusive.

Under date of February 13, 1976, General Chairman Bradford appealed by letter to Superintendent Needham from the discipline imposed on Claimant, specifying reasons for his position.

Under date of February 18, 1976, Mr. Needham wrote to Mr. Bradford, as follows:

Dear Sir:

"Reference to your letter of February 13, 1976 in connection with your appeal of decision made January 23, 1976 in assessing Mr. John W. Dace 30 days actual suspension.

This is to advise that your claim in behalf of Mr. Dace for eight (8) hours each day and all overtime to which he might have been entitled if he had been permitted to work these dates at track laborers rate of pay is respectfully declined."

By letter dated March 10, 1976 General Chairman progressed the appeal to Carrier's Director of Labor Relations and therein raised, among other matters, a contention that in his earlier response to the General Chairman, Superintendent Needham had violated Rule 20B of the Agreement between the parties by not giving a reason for disallowing the time claim made therein on behalf of Claimant.

Section 1 (a) of Rule 20B in specifying method and time limitations for claims or grievances states, in part:

"Should any such claim or grievance be disallowed, the carrier shall within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented."

We agree with Organization that Superintendent Needham's reply of February 18, 1976 contained nothing which could reasonably be construed as reasons for his disallowance of claim which said letter announced.

Carrier contends that **inasmuch** as the Superintendent had supported his suspension notice of **January 23, 1976** by specifying reasons **therefor** in said letter, it was not necessary to repeat them again in the reply to appeal **claim**. But, Section 1 (a) of Article 20B **makes** it quite clear that a **claim** is to **be** regarded as having separate identity **from** a discipline notice and puts an obligation on the Carrier receiver thereof to display a posture of having given it consideration, as such, and supplying reasons **for** his decision on the request **made**. Such express **mandate** is not satisfied by a contention that inasmuch as the **same** individual has **previously** taken a position **on** and **explained** his reaction to the hearings in respect to the subject of said hearing, **he need** not now give reasons for rejection of an appeal **therefrom**, on the **presumption** that his reasons may be deduced or inferred **from** his earlier **statement** in the earlier letter. To depend on such inference would be to tolerate a transfer of an obligation for analysis, **explanation** and specific **communication** thereon put on **management** in this clause, to a conjectural presumption unfairly **imposed** on **Claimant** and nullify the obvious purpose of the clause to demonstrate **full** and responsive consideration of **the claim** raised.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of **June 1978**.