

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23459**
Docket **Nuder TD-23030**

Martin F. **Scheinman**, Referee

PARTIES TO DISPUTE: (American Train **Dispatchers** Association
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the American Train **Dispatchers Association**
that:

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier") violated the current Agreement (effective July 1, 1976) between **the** parties, Rule 24 thereof in particular, when the Carrier failed to give Train Dispatcher K. D. Shreffler (hereinafter referred to as "the Claimant") an investigation within seven calendar days as provided **in** the Agreement and when the Carrier applied thirty (30) days' **suspension**, without pay, to the Claimant based upon the investigation held on April 27, **1978**. The record, including the transcript, fails to support the discipline assessment made by the Carrier and/or establish guilt on the part of the Claimant. The imposition of the discipline of thirty (30) days' actual suspension was, therefore, arbitrary, capricious, unwarranted and an abuse of managerial discretion.

(b) The Carrier shall now be **required** to compensate the Claimant for all **losses** sustained as a result of this **action in** accordance with Rule 24(c) and clear the Claimant's **personal** record of the charges which allegedly provided the basis for said action.

OPINION OF BOARD: Claimant, K. D. Shreffler, was assessed a thirty (30) day suspension based upon an investigation held on April 27, 1978. He was charged with failing to perform his duties properly on **April 15, 1978**.

Claimant received a notice of investigation dated April 17, 1978 advising of a formal investigation on April 19, 1978. On the same date and contained in the same envelope, Claimant received another notice dated April 17, 1978, advising that the investigation had been postponed and rescheduled for April 27, 1978. The **investigation was** held on April **27, 1978**.

The **Organization** contends that the investigation **was** defective since Carrier did not **comply** with the seven (7) day **time** limit in Rule 24 (a) of the Agreement. As to the merits, it contends that Carrier failed to meet its burden of proving that Claimant violated some rule or instruction.

Rule 24 (a) states, in pertinent part:

"The investigation shall be held within seven calendar days of the alleged offense..."

The seven day time period **commenced** on April 15, the date of the alleged offense. The investigation, **originally** scheduled for April 19, was postponed unilaterally by Carrier **until** April 27, beyond the seven day limit.

At the outset of the investigation, the Organization raised its contention that Carrier failed to comply with the **time** limit in Rule 24 (a). Thus, the **Organization's** objection was timely.

This Board has held, in Award Nos. 22258 and 22898, that the rule in question is to be strictly enforced, and is not a mere guideline. The language of Rule 24(a) is clear, **unambiguous** and mandatory upon all parties. Investigations must be held within seven calendar days of the alleged offense, unless an **extension** is mutually agreed upon by the **parties**. Carrier's unilateral postponement of the investigation **from** April 19 to April 24 violated this rule. See also **Third** Division Award Nos. **17145, 19275, 21996** and 22682.

In view of this time limit violation, we must sustain the claim as presented without reaching the **merits** of this case.

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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulsen

Executive Secretary

Dated at Chicago, **Illinois**, this 8th day of December **1981**.

