

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23496
Docket Number TD-23032

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 D. L. Colby (hereinafter referred to as "the Claimant") an investigation within seven calendar days as provided in the Agreement, when the Carrier failed to give the Claimant's representative a copy of the decision in writing within seven calendar days after completion of investigation (nor a copy of the investigation transcript) and when the Carrier applied sixty (60) days' deferred suspension to the Claimant based upon the investigation held on April 21, 1978. The record, including the transcript, shows that the Carrier did violate the time limits contained in the Agreement and fails to support the discipline assessment made by the Carrier and, therefore, the imposition of the discipline of sixty (60) days' deferred suspension was 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, Train Dispatcher D. L. Colby, after investigation, was given a sixty (60) day deferred suspension following a hearing held on April 21, 1978.

The Organization contends that Carrier violated Rule 24 of the Agreement because the investigation was not held within seven (7) calendar days of the alleged offense and also because the decision to discipline Claimant was not rendered within seven (7) days after the completion of the investigation. It asserts that the imposition of discipline was arbitrary, capricious, unwarranted and an abuse of managerial discretion. It asks that its claim be sustained.

Carrier, on the other hand, contends that the Organization failed to object to the two postponements of the investigation when it was notified of them. Therefore, it insists that the Organization concurred with the postponements and that they were not unilateral. As for the decision, Carrier argued that Rule 24 (a) requires only that the decision be rendered - in contrast to received - within seven days of the investigation.

The date of the alleged offense is April 6, 1978. The seven (7) day time limit commenced on that date. By letter dated April 10, 1978, Claimant was directed to appear for formal investigation on April 11, 1978. On the same date and contained in the same envelope Claimant was notified that "Due to inability of interrogating officer to be present, investigation originally scheduled for 1:00 P.M., April 11, 1978 . . . is hereby postponed and rescheduled for 1:00 P.M., Tuesday, April 18, 1978." Thus, Carrier concurrently scheduled an investigation within the seven day time limit and then rescheduled the investigation outside of the time limit.

Subsequently, on April 14, 1978, Carrier again postponed the investigation due to inability of interrogating officer to be present, and rescheduled the investigation for April 21, 1978, on which date the hearing was held.

The language of Rule 24 is clear, unambiguous and mandatory upon all parties. Unless the time limits are mutually extended by the parties investigations shall be held within seven (7) calendar days of the alleged offense. Here, due to Carrier's unilateral postponements, the investigation was held outside of the time limits.

Carrier contends that the Organization concurred in the postponements and, therefore, they were not unilateral. However, during the handling on the property, the Organization consistently argued that "Neither the claimant and/or his representative were asked to concur, nor did either request such a postponement" (letter of June 1, 1978). This statement was not refuted by Carrier. Therefore, it must be concluded that the postponements were unilateral.

This Board has held on several occasions that the time limits set forth in Rule 24 (e) must be strictly enforced. They are not mere guidelines. They are procedural prerequisites to the imposition of discipline. Third Division Award 19275 states:

"The record is clear that the investigation was not conducted within the 10-day time limitation of Article IX (b). There is no showing that the time limit was extended by Agreement between the Carrier and the dispatcher or his representative, or that the Carrier attempted to obtain such an Agreement. The Board must apply the Agreement as written, and as the procedural requirements were clearly violated by the Carrier, we will sustain the claim on this basis, without passing upon the question as to the responsibility on the part of the claimant for the accident involved."

See also Awards 22258, 22898 and 22682. Carrier did not obtain or attempt to obtain agreement with the Organization to postpone the investigation. Indeed, it postponed the investigation at the same time that it notified Claimant that there was an investigation in the first place. Therefore, Carrier violated the time limits of Rule 24 (a).

In view of the violation of **time** limits with respect to the investigation, we need not consider whether the time limits for rendering **the decision were also violated, and we must sustain the claim as** presented without reaching the merits of this case.

The remaining question concerns the appropriate remedy **in** this case. The Organization asked for monetary damages. However, **under** Rule 24 (c), **a monetary** award is appropriate only where the **claimant** has been held out of service or dismissed. Since Claimant received **only a suspended** discipline, **his** remedy will be **limited** to expunging the discipline from his record.

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 **Employees** involved in this dispute are respectively **Carrier** and **Employees** 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 in **accordance** with the **Opinion**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.