NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

RAILWAY PATROLMEN'S INTERNATIONAL UNION, AFL-CIO

THE NEW YORK CENTRAL RAILROAD COMPANY (New York District)

STATEMENT OF CLAIM:

(a) That the carrier violated rules of current agreement when it dismissed from service former patrolman, Bernard Magee.

(b) That claimant shall be returned to service with full seniority and compensated for all wage loss since date of removal from service.

OPINION OF BOARD: Claimant, a patrolman, was dismissed from Carrier's service on charges of "neglect of duty" on December 11, 1960.

Rule 13(a) of the applicable Agreement requires that an employe with Claimant's length of service will not be disciplined without "a fair and impartial investigation" that "will be held within ten days of the day when charged with the offense." Claimant was "charged with the offense" in question on December 13, 1960, and the investigation should have been held by December 23, 1960, at the latest. It was opened on December 20, 1960, but adjourned to January 12, 1961, then to January 19, next to January 26 and again to February 1, 1961, all by agreement between the parties. Claimant then requested by letter of February 1, 1961, a postponement until February 8, 1961, because of illness.

As of February 8, 1961, there was no violation of the time-limit rule since all postponements had been agreed to by the parties. To accommodate Carrier's convenience, the investigation could have been delayed a few days more since the February 8 had been requested by Claimant for his own convenience. However, Carrier did not hold the investigation until five more months had elapsed and the burden is on Carrier to show by written evidence that the parties had agreed to postpone the investigation to that extent. Where the ten day limit was so clearly prescribed by the applicable collective bargaining agreement, Carrier could not rely on anything but clear written evidence of an agreement to postpone the disciplinary investigation beyond that time limit.

The inspector's letter of February 8, 1961, does not furnish the necessary clear proof. It is a self-serving statement and, unlike letters relating to previous postponements, does not even aver that Claimant or his representative had agreed to the time extension. For all that appears from the inspector's letter of February 8, Carrier was informing Claimant of the time when it alone had decided to hold the investigation. It was Carrier's responsibility to see that Claimant was accorded an investigation within the prescribed time and there was no need for Petitioner to press for the investigation or to correct the inspector's letter of February 8, 1961, in any respect.

The prompt investigation guaranteed by Rule 13(a) is an important right, particularly where as here serious accusations reflecting on Claimant's character and professional qualifications are involved. The applicable Agreement clearly sets forth the time-limit requirement and it will be strictly enforced.

There is also some indication that Carrier committed prejudicial error when it denied Claimant's timely request for additional particulars. The charges were much too vague but it is unnecessary to consider this question in view of the above conclusions.

When Petitioner appealed the inspector's decision to dismiss Claimant, it necessarily put into issue the latter's compensation and reinstatement since the whole objective of the appeal was to restore Claimant to a status he would have occupied if not dismissed. We therefore find no merit in Carrier's contention that Petitioner neglected to raise the matter of compensation at the proper time on the property.

In view of the foregoing discussion, the claim will be sustained.

FINDINGS: The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1963.

CARRIER MEMBERS DISSENT TO THE FOLLOWING AWARDS:

Award No.	Docket No.	
Award No. 1747 —	Docket No. 1661 —	RYA v. GTW
1748 —	1670 —	RYA v. HB&T
1753 —	1696 —	"
1754 —	1697 —	"
1756 —	1705 —	ARSA-NYC
1760 —	1716 —	"
1764 —	1744 —	RPIU v. NYC
1767 —	1768 —	"

"Carrier Members dissent."

A. H. Deane
J. R. Wolfe
C. A. Conway
Carrier Members