

Award No. 1865

Docket No. 1852

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:

RAILROAD YARDMASTERS OF AMERICA

MINNESOTA TRANSFER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America: For reversal of action of Supt. C. L. Lamphere and Vice Pres. B. N. Howery, wherein they suspended Yardmaster L. E. Oliver for 10 days, November 19, 1962 to November 29, 1962 inclusive, and that he be reimbursed for this unjustified suspension.

OPINION OF BOARD: Claimant was suspended from his Yardmaster position for ten working days after a hearing had been held on charges of negligent performance of duties.

The only basis for the claim mentioned on the property was that Carrier failed to comply with Rule 10 (c) of the applicable Agreement which requires that (1) "Yardmasters shall have a right to have an employe of their choice present at investigations,"; (2) all parties interested will be notified to be present at the investigation and; (3) the results will be made known within three days after the hearing. The record shows that Carrier informed Claimant of its decision within the necessary three days and notified the interested parties to attend the hearing. Claimant made no request during its course that any employe be present at the investigation and replied in the negative when specifically asked whether he desired any witnesses. It is clear that there was no breach of Rule 10 (c) on Carrier's part.

In its submissions and arguments before this Board, Petitioner also contended that Carrier violated Rule 10 (a) which provides that charges against a Yardmaster must be clear, complete and in writing. This point was never raised on the property, so far as the record shows, and the parties had no opportunity to exchange views and explore the issues regarding it. Under the circumstances, we cannot properly consider the argument belatedly raised by Petitioner as to Rule 10 (a). See Awards 246, 474, 757 and 1688.

There is evidence to support Carrier's findings and no valid basis is perceived for the present claim. It will be denied.

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 waived right of appearance at hearing, but were granted privilege if appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **FOURTH DIVISION**

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 10th day of December 1963.