

**Award No. 1880**

**Docket No. 1857**

**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.

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**PARTIES TO DISPUTE:**

**THE AMERICAN RAILWAY SUPERVISORS ASSOCIATION**

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS**

**STATEMENT OF CLAIM:** It is the claim and request of the Petitioning Organization that:

1. The Respondent Carrier violated Rule 16 of the effective agreement dated March 16, 1945, revised October 16, 1949 by their unfair, unjust and unwarranted dismissal of Mr. L. C. Oelze, third shift car Foreman, during the week of July 12 thru July 30, 1962, and Mr. W. F. Weeke, second shift Car Foreman, during the period of July 12 thru July 16, 1962.

2. The Carrier's violative action of said dates shall be revoked and Claimants Oelze and Weeke shall be paid for such period said Claimants were held out of service.

**OPINION OF BOARD:** Petitioner contends that Carrier failed to observe the requirements of Rule 16, the applicable Agreement's discipline provision, in suspending two car foremen for periods of fifteen working days in one case and five in the other.

Before these penalties were assessed, Claimants attended and participated in a hearing that was held pursuant to the following written notice addressed to seven employees, including the two Claimants:

"A hearing to develop the facts and your responsibility, if any, of the run-out of Wabash No. 209's train from Jefferson about 8:10 A.M. on Sunday, June 17th, 1962, will be held in Room 376, Union Station, St. Louis, Missouri, Thursday, June 21st, 1962, at 9:00 A.M., (CST).

You are notified to be present.

You may have a representative, of your choice, at this hearing, if you so desire."

Petitioner contends that the above notification is not adequate and in compliance with Rule 16 which prescribes that "Charges will be made in writing at least twenty-four (24) hours in advance of the hearing in order that the accused may arrange for representation of his choice and such witnesses as he cares to have." We disagree. The notification in

question was in writing and timely and did place Claimants on notice that they would have to defend themselves at the hearing concerning the "run-out of Wabash No. 209's train from Jefferson about 8:10 A.M. on Sunday, June 17th, 1962." It was clearly stated in the notice that an objective of the hearing was to develop Claimants' responsibility in the matter of the "run-out" of a specific train at a specific date and time. This notice was sufficient, in our opinion, to apprise the employes concerned of the gravity and nature of the hearing, including particularly the fact that their responsibility for the "run-out" was very much in question. See First Division Award 16266 as well as Third Division Awards 4169 and 10727; cf. First Division Awards 14469, 11929 and 5197, emphasized by Petitioner, which are not in point since they do not concern notices that include a phrase substantially similar to "develop . . . your responsibility, if any" for the occurrence under consideration.

Our review of the record satisfies us that the hearing was conducted in accordance with Rule 16 and that no prejudicial error was committed by Carrier. There is evidence in the record supporting Carrier's findings and, in line with well established Board principles, we will not disturb them or substitute our judgment for that of Carrier in this disciplinary case, particularly since the suspensions do not appear to constitute excessive or unreasonable discipline.

The claim 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 employes 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 not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope  
Secretary

Dated at Chicago, Illinois, this 28th day of January 1964.

#### DISSENT OF LABOR MEMBERS TO AWARD 1880, DOCKET 1857 — ARSA vs TRRA

This case involves Rule 16 of the effective Agreement between the parties named herein. Rule 16 cannot be properly evaluated without first considering the intent of the parties when the Rule was written.

It is our position that Rule 16 was never intended to be interpreted in such liberal fashion as set forth by this Board in the instant award.

The Rule does not provide for such uncertain charges which would leave a reasonable doubt in the mind of the person involved if he were accused, or someone else. To be sure, such language as "To develop the facts and your responsibility, if any . . ." cannot be evaluated as a positive charge containing no uncertainty. The alleged charge involved doubt and can be construed as foul play. The award is in error and we, therefore, dissent.

**LABOR MEMBERS**

**J. P. Tahney**

**R. H. Wachowiak**

**W. J. Ryan**