

Referee Jacob Seidenberg

PARTIES Railway Patrolmen and Security Officers Section,
 Allied Services Division, B.R.A.C.
TO (Formerly R.P.I.U., A.F.L. - C.I.O.)

DISPUTE: Lehigh Valley Railroad Company

STATEMENT OF CLAIM: (a) That carrier's action in dismissing from service
 Patrolman Leonard J. Yanick was unwarranted, unjust
 and violative of rules of agreement.

 (b) That claimant shall be returned to service with full
 pay for all time lost and seniority and vacation
 rights unimpaired.

OPINION OF BOARD: The claimant Patrolman was cited for the following charges,
 and after the Noticed Hearing, dismissed from the service
 of the Carrier. The Notice dated July 15, 1968 stated in
 its relevant parts:

"You are hereby notified to report to the office of
T.A. Falkowski, Captain of Police, Lehigh Valley
Railroad Company, 275 Johnston Avenue, Jersey City,
N. J. at 10:00 A.M., Thursday, July 25, 1968, at
which time you will be accorded a hearing on the
following charges:

- (1) Violation of Rule G. 'The use of
intoxicants or narcotics by employes
subject to duty, or their possession
or use while on duty, or on Company
property, is prohibited and is suf-
ficient cause for dismissal.'

- (2) Dereliction of Duty. In that while
on duty at Hillside, N.J. from 6:40 p.m.
until time of suspension, 10:40 p.m.
July 14, 1968, at no time during this
period did you properly perform your
duties.

- (3) Failure to have your service revolver and
issued equipment on your person while on
duty, Sunday, July 14, 1968.

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/s/ T. A. Falkowski
Captain of Police"

Rule 20 - captioned "Discipline and Hearings" states in its relevant parts:

- "(a) An employe shall not be suspended (except pending investigation), discharged or have record entered against him without being afforded a fair and impartial hearing.
- (b) At a reasonable time prior to hearing, employe and his representative shall be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses."

The Organization interposes several procedural objections to the Investigation Hearing. It stresses that Article 20 was violated in that no precise charges were filed against the claimant. Item (1) of the July 15 charges does not specify where and when the claimant violated Rule "G". Secondly, Item (2) of the charges cites the claimant for dereliction of duty without specifying in any detail in which way or manner the claimant properly failed to perform his duty.

The Carrier replying to these procedural objections states that the charge was clear and permitted the claimant to come to the Hearing being fully prepared to protect his interests. He was charged with a Rule G violation and taken out of service at the time he committed this violation. It would be difficult, maintains the Carrier, to provide a more precise description of the charge. The Carrier adds that the charge of "dereliction of duty" described the general and continuing failure of the claimant to act in a responsible manner.

The Board finds the July 15, 1968 Notice of Charges against the claimant fatally and materially defective. The Organization made a timely protest that these items of charge lacked specificity and preciseness and the Board concurs with this objection. The Notice of Charges, as the Carrier couched them, would not enable the claimant to know in a meaningful way how to prepare his defense. To charge him with a Rule G violation without specifying the day, time and place where he is alleged to have committed the alleged offense fails to give him the sort of notice that Rule 20 envisions. It is equally defective as to procedural and contractual due process to charge an employe with dereliction of duty without stating in which way the affected employe was derelict in meeting his job responsibilities.

The Carrier is not required to set forth its evidence in the Notice of Charges, but it is required to make a clear, unequivocal and definitive statement of the offense or offenses which the claimant is alleged to have committed, and note them in such a way that the

claimant may be able to know as to what charges will confront him and also enable him to prepare whatever defense or defenses, if any, he may wish to offer at the Investigation. The July 15, 1968 Notice failed to do this and cannot be characterized in any other way than being vague and imprecise. The Notice here in issue is fatally defective because it is violative of Rule 20(b) and under these circumstances the claimant did not have the fair and impartial trial which he is contractually guaranteed by Rule 20(a). Under these circumstances, the Board has no recourse but to set aside the discipline assessed at this procedurally defective Investigation Hearing held on July 25, 1968.

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

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: *Muriel L. Humfreville*
Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1970.