

Referee Irwin M. Lieberman

PARTIES Railroad Yardmasters of America

TO

DISPUTE: Houston Belt and Terminal Railway Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster T. O. Thomas record be cleared of all charges and that he be allowed compensation of appropriate rate for 5 days served as discipline due to being suspended on July 28, 1976.

OPINION OF BOARD: Initially, Petitioner avers that Claimant was not charged with any violations of Carrier rules when ordered to appear for the investigative hearing and subsequently was found guilty of violation of four General Rules and one rule from the Uniform Code of Operating Rules. The record of the hearing indicates that Claimant was notified as follows to appear:

"...for a Formal Investigation to develop facts and place responsibility, if any, in connection with the charge that Yardmaster J. L. Sides, Yardmaster T.O.Thomas allegedly failed to aid and/or assist Special Agent J. M. Tyler on or about 8:10 P.M., April 25, 1976, while employed as Yardmasters, when Special Agent Tyler called for emergency assistance."

Following the investigation, Claimant was found guilty and assessed a five day suspension for:

"...your failure to aid and/or assist Special Agent J. M. Tyler on April 25, 1976 and for your violation of General Rules 'B', 'E', 'K', 'H', Rule 501 (1) of the Uniform Code of Operating Rules."

Petitioner's position with respect to the specificity of the charge is well taken. First it is well established that the failure of the Carrier to give the charged employe a written notice that clearly specifies the precise charge against him, renders the disciplinary proceeding against such employe void. As Boards have said in a host of awards, the Board in Third Division Award No. 19357 stated:

"An employe subject to discipline is prejudiced if he does not know what Rule the Carrier is going to say he violated. The employe must know the charge, and the knowledge is inherent in the agreement providing for investigation and hearing."

A holding to the same effect was enunciated in a dispute between these same parties in Award 3462. This issue requires no further comment.

Petitioner raises a number of other issues with respect to the conduct of the hearing which, though relevant, will not be discussed in view of our conclusions. In addition to the flaw indicated heretofore, an evaluation of the material contained in the investigation convinces us that the Claim must be sustained. It must be noted that Carrier failed to relate the alleged violations of the rules to any of the evidence. Further there was no evidence whatever to indicate that there was a call for emergency assistance. In sum, the conduct of Claimant was perfectly reasonable and beyond normal criticism: the Carrier did not meet its burden of proof that his conduct was deficient in any way. The Claim therefore must 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 parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:

Executive Secretary  
National Railroad Adjustment Board

By: *James J. Sever*  
Assistant Executive Secretary

Dated at Chicago, Illinois, this 4th day of August 1977