

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward Number 3766
Docket Number 3746

Referee Kay McMurray

PARTIES TO DISPUTE: American Railway Supervisors Association
TO
DISPUTE: Consolidated Rail Corporation

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

1. Respondent Carrier violated the Agreement and in particular, RULE 15, when it assessed Mr. A. A. Lidwell, Foreman, Altoona Shops, Altoona, PA discipline in the form of a one hundred twenty (120) days Suspension as a result of a Hearing held on January 10, 1979.
2. As a result of this unwarranted and violative action, Carrier should be required to rescind the discipline and reimburse Mr. Lidwell for any Wages Lost during the improper Suspension.

OPINION OF BOARD: Claimant, Mr. A. A. Lidwell, was employed by the Carrier as a foreman at its Altoona Locomotive Shop. He was notified by letter, dated December 27, 1978, to appear for a hearing on January 10, 1979 in connection with the following charges:

1. Violation of Safety Rule 4002 on 12/22/78.
2. Being unfit for duty and conduct unbecoming a Conrail supervisor at approximately 1:50 P.M., 12/22/78.

A perfunctory hearing was convened as scheduled and the hearing officer recessed the investigation to January 18, 1979. That date was changed to January 15, 1979. Following the full investigation at that time the action herein complained of was taken by the Carrier on January 25, 1979.

At the outset, the Organization raises a strong procedural objection claiming that Rule 15 of the Agreement was violated. That rule reads in pertinent part:

The hearing shall begin within 20 calendar days from the date of Carrier's first knowledge of the occurrence or offense.

The investigation was called to order on January 10, which was the 19th day after the occurrence. However, it was perfunctory. The hearing officer called the session to order and queried the claimant regarding receipt of the notice, his understanding of his rights, and his willingness to proceed. Mr. Lidwell responded affirmatively. Whereupon, the hearing officer announced that since a company witness was not available, the investigation was recessed until January 18. He would not allow the Claimant or his organization to place any further comments on the record. At the commencement of the hearing on January 15, 1979, the Organization requested that the tape of the January 10 meeting be read in its entirety in order to place its position on the record. That request was refused by the hearing officer and the events following the arbitrary announcement of recess were never allowed in the record. It is difficult for this Board to understand how a meeting wherein one party was denied any right to participate on the record could be judged the commencement of a fair and impartial investigation as required by the contract. The Carrier cannot avoid its clear obligation under the contract by such ruse. We find that the investigation required by contractual obligation actually commenced on January 15, well beyond the 20-day limitation. Rule 15 was violated and we have no alternative but to uphold the position of the claimant.

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 waived right of appearance at hearing, but were granted privilege of appearing before the Division with 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:

Executive Secretary
National Railroad Adjustment Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 12th day of August 1980