

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24982
Docket No. 44662
99-1-97-1-U-1981

The First Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago &
(North Western)

STATEMENT OF CLAIM:

“Claim of Engineer N. F. Prewitt, (Boone District) Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all time lost including time spent at the investigation and that all record of this incident be removed from claimant’s personal service record and that he be removed from the Union Pacific’s Discipline Policy known as Upgrade. Claimant was investigated on November 26, 1996 on the following charge:

‘Your alleged failure to reduce speed to restricted speed after exploding torpedoes at approximately MP 28.75, Track 1 Boone Sub. and your alleged failure to stop short of stop signal given by red flag at approximately MP 26.75 at about 1:50 p.m., November 21, 1996 while employed as crew member on NPPRB 20, on duty Boone, Iowa at 6:15 A.M.’

Claim premised upon the Union Pacific - BLE 1996 System Discipline Agreement.”

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute were given due notice of hearing thereon.

Examination of the record shows a fatal procedural flaw which necessitates rescission of the disciplinary action without comment on the underlying merits of the charges against Claimant. At disciplinary Investigation on November 26, 1996, Claimant and his BLE Representative made timely objection to proceeding on grounds that Carrier had failed to comply with the Notice requirements of the 1996 System Discipline Agreement. Specifically, Claimant and the BLE Representative asserted that the first time either saw the November 21, 1996 Notice of Discipline was at the Investigation. The Hearing Officer produced a copy of a letter dated November 21, 1996, over the signature of N. L. Quinn, Manager Administration and Purchasing, addressed to Claimant at his home. The Hearing Officer asserted that letter was mailed on November 22, 1996 by US Postal Service, certified mail, return receipt requested. Claimant testified without contradiction that he never received that letter and Carrier could not produce the return receipt to certify delivery or attempted delivery. The BLE Representative also testified that he never received a copy of the November 21, 1996 letter and on its face the letter shows no copy to the Organization. Carrier apparently concedes that none was sent to the BLE Representative but maintains that any oversight in the Notice of Investigation is merely technical and cured by the fact that Claimant was verbally notified on the scene at the time of the November 21, 1996 incident that he was being charged, following which he signed the Form 2 declining to waive Investigation.

The controlling language of the Discipline Rule read as follows:

"SYSTEM AGREEMENT - DISCIPLINE RULE

1. All existing agreements pertaining to the handling of discipline are eliminated and replaced by this agreement.

GENERAL

2. Locomotive engineers will not be disciplined without first being given a fair and impartial investigation except as provided below. They may, however, be held out of service pending investigation, but it is not intended that an engineer be held out of service for minor offenses.

NOTICE

3. Within 10 days of the time the appropriate company officer knew or should have known of an alleged offense, the engineer will be given written notice of the specific charges against him or her. The notice will state the time and place of the investigation and will be furnished sufficiently in advance to allow the engineer the opportunity to arrange for representation by a BLE representative(s) (the BLE Local Chairman or other elected BLE Officers) and witnesses. The notice will propose discipline to be assessed if investigation is waived and designate a carrier officer who may be contacted for the purpose of arranging for an informal conference on the matter. A copy of the notice will be furnished to the BLE Local Chairman.

WAIVER

4. Prior to the investigation, the engineer (and the BLE representative if desired by the engineer) may contact the designated carrier officer and arrange for an informal conference to discuss the alleged offense and proposed discipline. Such informal conference may be either in person or by telephone.
 - (a) If such informal conference results in the proposed discipline being dropped, no further action will be taken.
 - (b) If such informal conference results in proposed discipline being accepted by the engineer and the

investigation being waived, the engineer's record will be updated accordingly."

We do not concur that the proven procedural violations of the quoted notice and waiver provisions by Carrier in handling of this matter are merely technical and trivial. Compliance with the notice and waiver requirements of the Discipline Rule are essential to the procedural integrity of the UPGRADE progressive discipline system. Orally charging an employee at the scene and requiring him to sign off on a Form 2 without the benefit of consultation with his designated Union Representative is not compliance with these notice and waiver procedures. Nor is that dereliction cured by presenting Claimant and his Organization Representative with a copy of a Notice of Charges at the commencement of the hearing. Claimant's right to make an informed election of waiver/demand for hearing and the Organization's right to effectively represent the Claimant were fatally compromised by these fatal defects in notification procedures.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 17th day of March 1999.