

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25225
Docket No. 44899
01-1-99-1-U-2127

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of Engineer F. H. James for removal of Discipline, claiming all lost time (including time attending the investigation), fringe benefits, and clearing this notation of discipline from Engineer James’ record.”

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.

The Carrier suspended the Claimant for 30 days on March 22, 1999. As a result of an Investigation held on April 15, 1999, the Carrier found that the Claimant had violated Rules 9.2.13 and 9.5 of the General Code of Operating Rules on March 21, 1999 while working as an engineer on Train ZYCMX-20.

The Organization argues the Carrier violated the Agreement when it failed to date the transcript of the April 15, 1999 Investigation. However, it failed to cite a Rule

that requires that the transcript be dated. It also failed to show how the Claimant's rights were compromised as the result of the lack of a date.

The Organization also argues the notice of the Investigation was improper in that it did not name a Carrier Officer with whom the Claimant was to conference the matter before the Investigation, if he so desired. The Carrier admits its error in not complying with Article 3 of the System Agreement - Discipline Rule. However, it argues that this error is not a fatal mistake.

The discipline Rule is crucial to an employee's rights. The Rule along with Article 4 reads as follows:

"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.
- (c) If such informal conference does not result in either (a) or (b) above, or no informal conference takes place, the discipline imposed as a result of a hearing may not exceed that proposed in the notice of charges."

These elements of the discipline Rule are essential to the discipline procedure. Failure to follow these procedures is indeed a fatal fault.

Without ruling on the merits this claim will be sustained.

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 29th day of May, 2001.