

Award No. 1978
Docket No. 1762
2-L&N-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

- (1) That under the current agreement the Committee is entitled to copy of stenographic report of investigation.
- (2) Accordingly the Carrier be ordered to furnish copy of investigation involving Carmen C. H. Hosey, J. W. McIntyre, E. E. Brown and J. L. Miller.

EMPLOYES' STATEMENT OF FACTS: Under date of September 23, 1952, Carmen (Car Inspectors) C. H. Hosey, J. W. McIntyre, E. E. Brown and J. L. Miller were notified to appear in investigation in the assembly room of the master mechanic's building, Birmingham (Boyles), Alabama at 8:00 A. M., Friday, September 26, 1952, by Assistant Superintendent Mr. B. M. Mitchell. Copy of notification is submitted herewith and identified as Exhibit A.

The aforementioned charged employees complied with the demands of the assistant superintendent and submitted to investigation on September 26, 1952. A stenographic report of the investigation was taken by the Management.

This matter has been handled with all officers of the carrier who are designated to handle such cases and all have repeatedly declined to furnish copy of stenographic report of the investigation to committee.

The agreement of September 1, 1943, with revisions to February 1, 1952, is controlling.

POSITION OF EMPLOYES: It is submitted that under the terms of the working agreement, particularly that portion of Rule 32 reading:

"If stenographic report of investigation is taken the Committee shall be furnished a copy."

have the right of appeal, preferably in writing, with the higher officials designated to handle such matters in their respective order and conference will be granted within 15 days of application unless otherwise agreed upon.

32 (b) All conferences between local officials and local committees will be held during regular working hours without loss of time to committeemen or employes represented."

"RULE 33—APPEALS

33 (a) Should the highest designated railroad official, or his authorized representative, and the duly authorized representative of the employes, as provided in RULE 32 fail to agree, the case may then be handled in accordance with the Railway Labor Act.

33 (b) Prior to assertion of grievances as herein provided and while questions of grievances are pending, there will neither be a lockout by the employer nor a suspension of work by the employes."

It will be noted that there is nothing in Rule 34 pertaining to discipline which requires that copy of statements taken at hearings conducted under that rule be furnished the employes charged or their representatives.

It is not until a grievance is made—under Rule 32—that an employe has been unjustly dealt with, or some provision of the agreement has been violated, that provision is made for the committee being furnished a copy of stenographic report of investigation, if such report is taken. Under this Rule 32, the carrier is obligated to furnish the committee with copies of statements taken at hearings conducted under Rule 34 if the discipline administered is complained of. Likewise, carrier is obligated to furnish copy of stenographic report, if one is taken, in connection with investigation which is made covering grievances growing out of matters other than discipline.

The investigation in question, involving Carmen Hosey, McIntyre, Brown and Miller, was conducted by the carrier under Rule 34 to develop the facts and responsibility in connection with serious injury to an employe, and as a prerequisite to any discipline that might be administered in connection with the accident. But no discipline was assessed as a result of that hearing, and as heretofore pointed out, there is no provision in Rule 34 for the committee to be furnished copies of the statements taken.

No complaint has been made that any employe has been unjustly disciplined as a result of the investigation conducted under Rule 34. No such complaint can be made as no disciplinary action was taken. And as no grievance has been made, Rule 32 can have no application.

There is no support for the contention of the employes that under the current agreement they are entitled to copy of stenographic report of the investigation in question. The carrier violated no provision of the agreement in declining same, and the demand of the employes should be denied.

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

The carrier or carriers and the employe or 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 were given due notice of hearing thereon.

Claimants were charged with responsibility in connection with an accident which resulted in serious injury to a car inspector and, pursuant to

notice, appeared and submitted to the investigation regarding it, but no disciplinary action was taken against any of claimants following the investigation.

The chairman of the Carman's Organization, which represented claimants, requested copy of the stenographic report which had been taken at the investigation, pursuant to the provisions of Rule 32 that "If stenographic report of investigation is taken the committee shall be furnished a copy." Carrier's refusal to comply with the request is the ground of this claim.

Carrier insists that the rule requirement relied on must be read in connection with the remainder of Rule 32, together with Rules 33 and 34, and that when so read it applies only to those asserting grievance as a result of disciplinary action following the investigation.

True, the sentence on which claimants rely is placed in the rule entitled "Grievances," but that placing must have been fortuitous as it is not in any way related to the other provisions of the paragraph and has no logical connection either with the sentence preceding it or that which follows, while if that sentence is omitted the preceding and following sentences are in sequence of thought.

There being no express limitation in the rule, we think it must be held to apply in the case of any employe who is charged with responsibility and noticed in and examined at any investigation, as were claimants here.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July, 1955.