

Award No. 18370
Docket No. TE-18619

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk & Western Railway Company, TC-5699, that:

1. Carrier violated the terms of the Agreement between the parties when on Friday, June 6, 1969 it conducted a formal investigation and issued a letter of censure or Reprimand dated June 20, 1969 against the record of Dispatcher L. E. Ramsey.
2. Carrier further violated the terms of the Agreement between the parties when it failed to render a decision within ten (10) days after the hearing.
3. Carrier further violated the terms of the Agreement between the parties when it willfully refused to furnish the dispatcher (L. E. Ramsey) or his representative a copy of the transcript of the evidence taken at the hearing.
4. Carrier shall now be required to remove and expunge the Letter of Censure or Reprimand dated June 20, 1969 from the record of Dispatcher L. E. Ramsey.
5. Carrier shall further be required to furnish Dispatcher L. E. Ramsey and/or his representative with a copy of the transcript of the evidence taken at the hearing or formal investigation held on Friday, June 6, 1969.

OPINION OF BOARD: Claimant Ramsey was instructed by letter dated May 28, 1969, to report to the Office of Superintendent at Roanoke, Virginia, on May 29, 1969, for a formal investigation on the following charge:

"Your responsibility in connection with train 103-South, passing Northward Stop-and-stay dwarf signal No. 84R, resulting in damage to crossover switch at Glasgow, Virginia, Monday, May 26, 1969."

Claimant was one of several employes so charged. With this action Carrier set in motion its proper procedure under Rule 11½ to discipline employes covered by the Agreement between these parties.

Paragraph b of Rule 11½ says:

"A dispatcher against whom charges are preferred, or whom may consider himself unjustly treated, shall be granted a fair and impartial hearing before the Superintendent or his representative (other than Chief Dispatcher) within ten days of notice by either party. Such notice shall be in writing and shall clearly specify the precise charge or nature of the complaint. He shall have the right to be represented by a dispatcher and/or any authorized representative, as he may choose. He shall be given a reasonable opportunity to secure the presence of necessary witnesses. The decision shall be rendered within ten days after the date of hearing."

The investigation was held on June 6, 1969, following a postponement.

Fourteen days after the investigation, June 20, 1969, Superintendent Castner wrote Claimant:

"It is very evident that this accident resulted from a complete lack of understanding between you of the move to be made.

Due to circumstances involved in this particular case, discipline will not be applied against your records. However, you will be expected to carry out your duties in a responsible manner in the future, and no further incident of this nature will be tolerated."

Thus, Carrier's decision was not rendered within the time required.

Paragraph D of Rule 11½ says:

"A transcript of the evidence taken at the hearing will be made and a copy will, upon request, be furnished the dispatcher or his representative."

On June 9, 1969, District Chairman Carter wrote Carrier requesting the transcript. On July 23, 1969, Assistant Superintendent Cabiness replied for the Carrier:

"The investigation referred to was not made a matter of record, nor was a transcript made. No discipline was applied, and no entries were made against the personal records of any employee involved."

It is the position of the Organization that Claimant's job and future rights were put in jeopardy when the action was formally begun against him under Rule 11½ and that he is entitled under that Rule to appeal. It is the Carrier's position that there was no discipline assessed, that the letter dated June 20 was not made a part of his record and thus it is not required to supply a transcript.

Under Rule 11½(d) Carrier is required to make a transcript of the "evidence taken at the hearing" and make it available upon request.

There is no monetary part of this claim. It only asks that the letter of June 20 not become a part of Claimant's record. Carrier tells us it is not.

In sustaining this claim we direct the Carrier to follow its statement in the July 23, 1969, letter, supra, concerning the June 20 letter not being made a

part of Claimant's record; and reiterate the Carrier's obligation under Rule 11½ (d).

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1971.