

NATION& RAILROAD ADJUSTMENT **BOARD**

THIRD DIVISION

Award Number 21779
Docket Number CL-21595

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**

PARTIES TO DISPUTE: (

(The Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8144, that:

(a) The Carrier violated the Rules Agreement, effective September 1, 1946, particularly Rule 20, when it assessed discipline. of 15 days suspension on R. P. Cook, Relief Crew Dispatcher Centralized Craw Dispatching Office, Pittsburgh, Pennsylvania.

(b) Claimant R. P. Cook's record be cleared of the charges brought against him on January 6, 1975.

(c) Claimant R. P. Cook be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: On December 31, 1974, Claimant was notified to attend an investigation (on January 3, 1975) for an alleged failure to properly call a Fireman for a passenger train. Claimant did not appear at the investigation - which was conducted in absentia. On January 6, 1975, Claimant was notified of a reprimand for the substance of the asserted violation. On the same day, he was notified to attend an investigation concerning an alleged violation of Rule (T)B-1 of Carrier's General Rules.

The asserted violation of Rule (T)B-1 related to the failure to report for the January 3, 1975 investigation. Carrier assessed a fifteen (15) day suspension for that asserted violation.

At the second investigation, Claimant presented a reason for his failure to attend the original investigation, but we do not feel that it is necessary to explore that concept.

Carrier argues that Claimant's failure to attend the initial investigation constituted insubordination and it cites Award No. 15059 of this Division. But, we feel that First Division Award 20479 more clearly specifies the controlling concepts. There, the Board determined that an **employee** may voluntarily waive his rights to be present and protect his interests at his investigation, and that such a waiver is not an act of insubordination.

If an **employee** refuses to attend his investigation, he may very well be compelled to abide by the outcome of the investigation held in absentia (see Award 20113). But, we find no basis to conclude that the failure to attend constitutes an act of insubordination.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of October **1977**.

