

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35011
Docket No. SG-34194
00-3-97-3-767**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville and Nashville
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of J. E. Abrams to be made whole for all time (including overtime) lost as a result of his suspension from service from September 15 to October 11, 1996, and for any reference to this matter to be removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, when it failed to provide the Claimant with a fair and impartial investigation and failed to provide a written copy of the testimony taken at the investigation held on September 24, 1996. Carrier’s File No. 15(96-320). General Chairman’s File No. 96-176-7. BRS File Case No. 10295-L&N.”

FINDINGS:

The Third 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.

After an Investigation held September 24, 1996, the Claimant received a 15 day suspension for refusing to remove a baseball cap under his hard hat. Rule 55(b) provides that "[a] copy of the testimony taken at the investigation shall be furnished the employee or his representative, when requested." The record shows that multiple requests were made to the Carrier by the Organization for a copy of the transcript. However, the Carrier did not provide the Claimant or the Organization with a copy of the transcript.

Rule 55(b) is clear. If a request for a copy of the transcript is made, the transcript "shall be furnished." There is no discretion in the word "shall." See Third Division Award 3736:

"When such [disciplinary] decision is rendered and action taken thereon, if any, it then becomes important for the party affected and his representative, to have a complete and correct transcript of the proceedings upon which such decision is based in order that they may determine what action, if any, they should take."

In the absence of either or both, due to the fault of the Carrier, we find the rights of the Claimant were denied as provided by the Rules of the parties' Agreement.

The claim must therefore be sustained because, although requested, the Carrier did not provide a copy of the transcript as required by Rule 55(b).

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 Third Division

Dated at Chicago, Illinois, this 25th day of October, 2000.