

Award No. 13752
Docket No. TE-13037

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

NEW YORK CENTRAL RAILROAD - SOUTHERN DISTRICT
(Ohio Central Division)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central (Western District) that:

1. Carrier violated Article 32 (d) of the agreement when it failed to notify The Order of Railroad Telegraphers of the investigation held in the office of Trainmaster T. A. Riley, on December 8, 1960, covering Conductor H. H. Tipton, wherein Mr. J. M. Edwards, a telegrapher, was a witness.

2. Carrier violated Article 32 (c) of the agreement when it failed to furnish a copy of the transcript of the hearing of December 8, 1960, requested by District Chairman Woodgerd.

EMPLOYEES' STATEMENT OF FACTS: On Thursday, December 8, 1960, an investigation and/or hearing was held at Hobson, Ohio, in the office of Trainmaster Riley, covering the question of Conductor H. H. Tipton making a turn at Dickinson on Trains CN2 and NT7, wherein Telegrapher J. M. Edwards was on duty at Dickinson, West Virginia, when conversations between Mr. Tipton, Mr. Edwards, and Dispatcher Fultz took place. The admitted facts are that District Chairman H. K. Woodgerd, who represents the Telegraphers, including Mr. J. M. Edwards, was not notified of the investigation and/or hearing, as provided for in the agreement. Mr. Edwards was called as a witness.

On December 9, 1960, District Chairman Woodgerd requested the Carrier to furnish a copy of the transcript of the investigation and/or hearing, in accordance with the rules of the agreement.

By letter of December 12, 1960, Rules Examiner Snider declined the request for a copy of the transcript on the basis that Mr. Edwards was not charged, but merely appeared as a witness. Furthermore, Rules Examiner Snider claimed that the agreement was vague.

Position of the Carrier has been explained to the Organization through correspondence and conference on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: An investigation and/or hearing was held at Hobson, Ohio, on Thursday, December 8, 1960, in the office of Trainmaster T. A. Riley, covering question of Conductor H. H. Tipton making a turn at Dickinson on Trains CN 2 and N.T. 7. Telegrapher J. M. Edwards was on duty at Dickinson, West Virginia, at the time the Conductor made the turn. Edwards was called as a witness. There is no monetary consideration covered by this claim.

The Organization contends that Carrier violated Article 32 of the Agreement, particularly provisions (c) and (d), when it failed to give notice to The Order of Railroad Telegraphers, that J. M. Edwards, a telegrapher, was called as a witness, and also failed to furnish to the District Chairman, a copy of the transcript, upon request, of the hearing on December 8, 1960.

Article 32, provisions (c) and (d) read:

"(c) A transcript of the evidence taken at an investigation or hearing and on an appeal will be furnished to the employe or representative on request. An employe shall have reasonable opportunity to secure the presence of representatives and/or witnesses and shall be notified in writing of any discipline assessed within 10 days from date of completion of hearing."

"(d) The right of appeal by the employe or representative, in regular order of succession and in the manner prescribed, up to and inclusive of the highest official designated by the Company to whom appeals may be taken, is hereby established. At the hearing or on the appeal the employe may be assisted by his representative and/or one or more duly accredited representatives of The Order of Railroad Telegraphers. The duly accredited representative or representatives of The Order of Railroad Telegraphers will be notified of and may participate in investigations, hearings or appeals."

Carrier asserts that Edwards gave testimony in the capacity of witness only, appearing by request of the Carrier, and was not charged with any violation of the rules; therefore, the request for copy of the transcript was declined, as Edwards had not been subject to discipline. That all provisions of Article 32 are pertinent and controlling in the instant dispute.

Is the District Chairman of the Organization entitled to notice of investigations and/or hearings, and upon request, a copy of the transcript of investigations and/or hearings, when an employe is called as a witness?

We do not find Article 32 vague when the entire language of the agreement is interpreted under "Discipline, Hearings, Appeals." Article 32 affords the individual employe his inherent right to representation when charged or accused of a rule violation. Carrier is obligated under Article 32 to provide the employe so charged "a fair and impartial hearing", and assures the basic right of the Organization to notice and the right to represent the employe at any and/or all hearings. On appeal, to be furnished, upon request, a copy of the transcript of evidence. Provisions (c) and (d), read in context with all other provisions of Article 32, clearly set forth an employe's rights as an accused, not as a witness only.

The Organization takes the position that if in some manner such witnesses at a hearing became involved, and at a later date, "could be charged" the representative would have full value of the events leading up to such charge. This then would give the representative the full story in order to defend his name in order to resolve the duties of his office as District Chairman. We do not find fault with this basic position and statement, as such, but we do disagree with the speculative interpretation given to provisions (c) and (d) of Article 32 and find no evidence in the record to support the Organization's "could be charged" theory. Article 32 assures due process to each employe formally charged.

The Board finds that all the provisions of Article 32 are pertinent and controlling in the instant case. The Carrier is not required to furnish notice or a copy of the transcript of the investigations and/or hearings to the District Chairman when an employe appears as a witness only.

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1965.