NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22082
THIRD DIVISION Docket Number CL-21771

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-8170; that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it refused to grant Miss Noreen Griffin an investigation duly requested under the terms of Rule 50 thereof; and,

(b) The Southern Pacific Transportation Company shall now be required to grant Miss Noreen Griffin an investigation as requested in accordance with Rule 50.

OPINION OF BOARD: After extensive correspondence with the Carrier, the Claimant in this case requested an investigation under Rule 50, alleging "unfair and unjust" treatment. Since the cause of complaint was a continuing one, the request was timely under the provisions of Rule 50. This rule provides:

> "An employe who considers himself unjustly treated shall have the same right of investigation and appeal as provided in Rule 46, 48 and 49 if written request is made to his supervisor within fifteen (15) days of the cause of complaint."

The Carrier declined to provide for an investigation on the basis that the matter involved interpretation of Rules 12, 13, 14, and 15, and that any claim for violation of such rules must be processed in the normal claim procedure and not under Rule 50. The Carrier relies on Award No. 3 of Public Law Board No. 843, which held in part:

"The Claimant has the right to complain of unjust treatment, but such complaint should be made with reference to matters not covered by the rules of the Agreement. In this dispute the Claimant could only obtain relief, if any, under a rule of the Agreement covering the situation that exists in this dispute."

The Board finds that Award No. 3 of Public Law Board No. 843 does not have precedential value here. Neither the Organization nor the Claimant alleges violation of Rule 12, 13, 14, or 15. Further, the Board finds that Rule 50 does not here have the limitation prescribed under the circumstances involved in Award No. 3, Public Law Board No. 843. Specifically on all fours is Award No. 21923 (Mead), which distinguishes from Award No. 3 of Public Law Board 843 and in turn relies on Award 21178 (Blackwell). The Board finds that the request for a Rule 50 investigation is in order.

Carrier also relies on Award No. 8422, which denied a similar investigation. In that case the involved rule includes the right of investigation for matters "other than covered by these rules." This limiting exception is notably absent from Rule 50 applicable herein.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.