NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23843
THIRD DIVISION Docket Number TD-24031

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Western Pacific Railroad Company (hereinafter referred to as "the Carrier") violated the current Agreement (effective November 1, 1952) between the parties, including Rule 20(f) thereof, when the Carrier refused and continues to refuse to furnish train dispatcher J. C. McCall (hereinafter referred to as "the Claimant") a copy of the stenographic record (transcript) taken of the investigation held on October 22, 1974.

(b) The Carrier shall now be required to furnish the Claimant a copy of the stenographic record (transcript) of this investigation which was called (scheduled) by the Carrier.

OPINION OF BOARD: Rule 20 of the agreement between the parties is concerned with discipline, investigations and appeals, and that rule provides that an employe will not be demoted, disciplined or discharged without a proper investigation; and it establishes the procedural steps to be followed in a disciplinary matter.

Rule 20(f) states:

> "If a stenographic record of an investigation is taken, the train dispatcher involved or his representative shall, upon request, be furnished a copy."

On September 26, 1974, the Claimant received a notice instructing him to attend an investigation. The investigation was postponed until October 21, 1974.

The Employes cite prior Awards which have enforced similar agreement provisions, and here the Claimant requests that this Board rule that the Employer is obligated to furnish a copy of the stenographic record to the Claimant, because an investigation was taken and a request for a copy has been made.

The Carrier notes that the investigation was started, but was then recessed prior to its completion, and was never reconvened. Subsequently, it was cancelled and a transcript was never prepared. Further, the Carrier suggests that the intent of the cited rule is to assist a "disciplined employe in the progression of an appeal from the disciplinary action taken." Thus, Carrier reasons, when no disciplinary action was taken, the reason for furnishing a transcript disappears. The Organization takes exception to that conclusion, and relies, instead, upon what it contends to be the clear wording of the rule.

Obviously, a determination in this, or a related, case must depend upon the particular facts of record. Unquestionably, under this record, a request for a copy was made. We must then determine if a stenographic record of an investigation was taken. In that regard, the record seems to clearly establish that the Carrier did schedule an investigation to determine facts and place possible responsibility for a collision between a train and a car. As we understand the record, the investigation was started, but was then postponed and subsequently cancelled without ever having been completed. Accordingly, the Carrier did not order a copy of the transcript from the Certified Shorthand Reporter who was engaged to prepare the transcript.

The Board tends to agree with the Employes that the Company's stated reason for the inclusion of Rule 20(f) in the agreement does not control the outcome of this case. We do not concur that the record establishes that Rule 20(f) exists solely to insure a procedural remedy in the event the employe feels aggrieved by disciplinary action taken by the Carrier pursuant to Rule 20. Stated differently, if, in fact, there was an investigation completed and the appropriate Carrier personnel determined that the employe was not guilty, then the obligation under Rule 20(f) would still exist, even though there exists no need for an appeal.

While we conclude that the Carrier reads the rule too narrowly, we also conclude that the Employes read the rule too broadly. We must bear in mind that investigations are fashioned after "trials" as a means of ascertaining facts so that appropriate determinations can be made. The fact that an investigation may be started does not constitute the limited proceedings taken thereunder as an "investigation", as such, any more than one would consider that there has been a "trial", as such, if such a judicial proceeding started but was postponed and cancelled prior to its completion.

Obviously, as indicated above, our determination is limited solely to this particular case. Under this record, we question that there was an "investigation", as such; and thus, the Certified Reporter merely took notes of a proceeding which fell short of being a full investigation. Consequently, there is no enforceable obligation against the Carrier under Rule 20(f).

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.