

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23843
Docket Number TD-24031

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(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 **employee** 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 **Employees** 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;

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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.

