

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24891
Docket Number MW-24901

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed and refused to furnish Mr. Jerry J. Martin and his representative (Assistant General Chairman Holland B. Hurley, Jr.) with a copy of the hearing held on August 19, 1981 in connection with charges leveled against Mr. Martin (System File C-TC-1205/MG-3211).

(2) The Carrier shall now furnish Messrs. Martin and Hurley, Jr. with a copy of the transcript referred to in part (1) hereof.

OPINION OF BOARD: Pursuant to notification by the Carrier, the Claimant attended a hearing on August 19, 1981 with respect to a charge concerning an injury which he sustained due to his failure to follow "Safe Job Procedure". After the hearing was held, the Carrier determined that the evidence adduced at the hearing was insufficient to uphold a finding of guilt and exonerated the Claimant. The issue in dispute arises from the Carrier's failure to furnish a transcript of the hearing to the Claimant and his representative, as demanded by the Organization.

Rule 21 (c) provides:

"A transcript of the evidence developed at the hearing shall be made and the employee and his representative shall be furnished copy of such transcript."

The terms of Rule 21 (c) are clear, unambiguous and unqualified. By its failure or refusal to furnish a transcript of the hearing held on August 19, 1981, the Carrier has violated Rule 21 (c). That the charges were not sustained and thus no discipline imposed against the Claimant is irrelevant to the application of Rule 21 (c). The terms of the Rule are in no way modified or nullified by the outcome of the hearing.

Nor is it relevant that the Claimant has no need for the transcript in order to file an appeal. Again, it must be underscored that Rule 21 (c) is written in clear and simple language and the obligation by the Carrier, must be honored even though there is no need for an appeal. Third Division Award No. 23843.

Moreover, it cannot be urged that since there was no "evidence developed at the hearing" to support the charge in the instant case, there is no requirement under Rule 21 (c) to provide a transcript. Rule 21 (c) provides in relevant part that a transcript of the evidence developed at the hearing shall be made***. Rule 21 (c) does not distinguish between "evidence developed at the hearing" in support of, or not in support of, a charge. The terms of Rule 21 (c) are unqualified.

A final matter which must be addressed is the Carrier's contention that the "transcript is nonexistent and therefore the issue is moot." If the stenographer's notes of the hearing exist, the Carrier is required to have them transcribed. If, for some reason, it is impossible for the Carrier to satisfy its obligation under Rule 21 (c), the issue which has been raised cannot be considered moot. Indeed, the Board is of the view that a resolution of the issue is required, if only to establish the integrity of Rule 21 (c) and to be faithful to its terms.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1984.