

SPECIAL ADJUSTMENT BOARD NO. 18
(Engine Service Panel)

PARTIES TO DISPUTE: United Transportation Union -
Southern Pacific Transportation Company
(Western Lines)

STATEMENT OF CLAIM: Claim on behalf of Portland District
Hostler D. M. Roberts: "...that you expunge the dismissal
from Mr. Roberts record and return him to service, seniority
unimpaired. Also compensate him for all time lost from
March 23, 1987 until returned to service..."

Claimant was reinstated to service August 17, 1987.

STATEMENT OF FACTS: On February 26, 1987 the Claimant was
sent the following notice:

"You are hereby notified to be present at the office of
the Division Mechanical Manager, Eugene, Oregon at
9:00 AM, Wednesday, March 4, 1987, for a formal
investigation in connection with your alleged failure
to properly note position of west Roundhouse Track No.
4 switch, which resulted in a run-through and damaged
switch during movement of locomotives SP-4338 and SP-
3759 under your control at approximately 2:00 AM on
February 18, 1987, and your alleged act of negligence,
and carelessness of the safety of others by the failure
on your part to report to your supervisor a damaged or
defective switch while Mr. S. P. Johnson worked hostler
Run 173, and Mr. D. M. Roberts worked hostler helper
Run 153, both on-duty at 11:30 PM, on February 18,
1987, at the Eugene Roundhouse, for which occurrence
you are hereby charged with responsibility which may
involve violation of Rules 104(N) and 607 of the
General Code of Operating Rules, those portions
reading:

"Rule 104 (N). "DAMAGED OR DEFECTIVE SWITCH:

"If a switch is damaged, a report must be made
to...supervisor. Switch must be spiked unless
trackman takes charge at once. If it cannot be
made safe, protection must be provided."

"Rule 607. "CONDUCT: Employees must not be:

"(1) Careless of the safety of...others.

(2) Negligent."

The investigation was held on March 11, 1987. Subsequent to the investigation, on March 23, 1987, the Claimant was dismissed.

At the conclusion of the investigation the local chairman requested two copies of the transcript of the proceedings no later than when the decision was rendered. It is undisputed that the local chairman had not received a copy of the transcript by the time he appealed the dismissal about three weeks later. He was given tape recordings at the conclusion of the investigation and a typed transcript was provided on June 11, 1987 when it became available.

The Claimant was reinstated August 17, 1987. Therefore, the claim before the Board is for time lost.

FINDINGS: The Board finds, after hearing upon the whole record and all evidence that the Parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement and it has jurisdiction of the Parties and the subject matter, and that the Parties were given due notice of the hearing held.

DECISION: The procedural issues presented by this case revolve around Sections 3 and 7 of Article 51 of the agreement covering firemen, hostlers and hostler helpers. They read as follows:

"Section 3, Article 51 reads:

"No employee governed by the provisions of this agreement shall be suspended or discharged, except in serious cases where fault is apparent beyond a reasonable doubt, until he has had a fair and impartial hearing before the proper officials. Ordinarily such hearing will be held within five days from date of suspension."

Section 7, Article 51 reads:

"If the Chairman of the Local Committee of Adjustment requests a transcript of the testimony in an investigation that has been made, it will be furnished."

"Notes 1 and 2 following Section 7 read:

"Note 1: It is understood the above rules cannot be construed to have been properly observed unless the employe and/or his representative are confronted with all the charges and evidence and provided with a copy of transcript of all evidence.

"Note 2: A verbal request at the conclusion of an investigation, for a transcript of testimony, made by the Chairman of the Local Committee of Adjustment, or a person who acts for and in the absence of the chairman as the representative of the employe, shall be made a part of the record, and transcript will be furnished to the chairman. If the Local Chairman specifically requests two (2) copies of the transcript, same will be provided."

The question at issue is whether a time limit is implied under Article 51 Section 7, Note 2 for providing a transcript when requested. At the outset, it should be made clear that providing a tape recording of the investigation does not comply with the relevant rules. The rule calls for a transcript which is a written record. Beyond this there is no question as a general matter when a transcript is provided 4 months after the investigation and after a claim has been filed, denied, and appealed to the highest level that Note 2 of Section 7 has been violated. Accordingly, under the clear language of Note 1 this fact dictates that the requirements of Article 51 have not been "properly observed". Therefore, the discipline must be vacated on this basis.

Another question, one more specific, remains and that is when must the transcript be provided. The local chairman requested the transcript not later than the date of the decision. The Organization argues that since under Section 10 of Article 51 they must file a claim within 90 days of the discipline decision the transcript must be provided at that time. If it is not, their time limit is eroded and in order to protect the time limits they are forced to appeal decisions without the benefit of a written transcript.

The Board agrees with the Organization that without a copy of the transcript a fully informed and intelligent appeal isn't possible. In fact, it is easy to imagine that it would be difficult in many cases for the Carrier to make a full and fair decision on the evidence without a transcript. If the transcript could be provided after the disciplinary decision the Claimant's contractual right to 90 days in

which to appeal the decision would be prejudiced and abrogated. The various agreement provisions (in this case, Section 10 A and Section 7 Note 1 and 2), must be construed in such a way which gives full meaning to and does not nullify each provision. Without a transcript the Claimant's right to a full 90 days to prepare an effective appeal would be negated. It is noted that if there is difficulty in transcribing the hearing the Carrier has a reasonable period of time in which to render their disciplinary decision.

The claim is sustained.

Gilbert H. Vernon

Gilbert H. Vernon
Chairman and Neutral Member

P. G. Sears

P. G. Sears
Carrier Member

J. R. Leininger

J. R. Leininger
Employee Member

Dated this 30th day of January 1989
San Francisco, California.