

## ARTICLE 62

### INVESTIGATIONS

- (a) (1) An employee shall not be discharged on any charge whatsoever, until after a fair and impartial formal investigation has been held by the Superintendent or his representative, and his guilt established.
- (2) An employee may be held off duty pending formal investigation in instances when, if permitted to work, it is apparent that he would be a hazard to himself or his fellow employees.
- (b) (1) An employee shall not be disciplined on any charge whatsoever, without first having a fair and impartial investigation and his guilt established, unless he agrees in writing to the Superintendent to waive investigation, accepting discipline against his personal record. When an employee waives formal investigation and accepts discipline, he will be advised in writing of the discipline assessed.
- (2) Formal investigation(s) will not be scheduled account of a personal injury(s) of an employee(s) unless the Carrier's normal preliminary investigation develops a substantial reason to believe that a violation of a specific operating or safety rule may have occurred which caused such injury. Discipline will not be assessed unless the Carrier proves at the investigation a clear violation of a specific rule by the individual. This does not modify or abrogate the employee's right to accept discipline by record in writing and waive formal investigation.
- (c) (1) Prior to the investigation the employee(s) involved will be notified in writing, with copy to his (their) duly authorized local chairman, of the charges, which will be confined to the case to be investigated, sufficiently in advance of the time set for investigation to allow reasonable opportunity to secure the presence of necessary representative and witnesses. In fixing hours at which investigations will be held, due consideration of the need for rest by employees will be given by the Company's officers.
- (2) If the final decision decrees that charges against the employee(s) were sustained, discipline issued will be confined to the case being investigated, as set forth in the notice.
- (d) Investigations will be held promptly, but in any event not later than thirty (30) days from the date of occurrence of the incident to be investigated, except when the employee, his representative, or a material witness is unable to attend an investigation because of sickness or injury, the investigation may be deferred until such time as the employee, his representative or material witness is able to attend the investigation.
- (e) (1) Unless otherwise agreed to, all employees involved and notified shall be present at the investigation.
- (2) The employee(s) charged will remain throughout the investigation, as well as all witnesses after giving their testimony unless the latter are excused by mutual consent.

- (f) At the investigation, the employee will be entitled to be represented by his duly authorized General or Local Chairman of the UTU or an employee of his choice, holding seniority on his seniority district.
- (g) There shall be a Board of Inquiry composed of the Superintendent or his representative and the representatives of the employees being investigated. No person or persons, other than the members of the Board of Inquiry, shall be permitted to interrogate any witness or otherwise take part in the determination of the matter which is being investigated. No person or persons shall be allowed to be present in any investigation, other than the Board of Inquiry named and the actual witnesses if there is any objection by any member of the Board of Inquiry, except Mechanical Department representatives will be permitted to remain in those cases where enginemen and/or Mechanical Department employees are a party to the same matter being investigated, but will not be permitted to interrogate conductors or trainmen.

NOTE: With respect to your position a Mechanical Department Representative, who is a member of an Eastern Lines Board of Inquiry cannot interrogate an individual when the investigation rule contained in a current schedule covering the Northern and Southern Division, specifically so states, this will confirm our discussion at Dallas, Texas, July 24, during which you were advised that formal investigations conducted under Eastern Lines procedures would recognize Section XIII of the so-called Interdivisional Agreement dated October 4, 1972 to the extent a Mechanical Department Representative would not personally interrogate such individual; however, we would retain other prerogatives attached to Eastern Lines procedures such as the order individuals would testify whether they be witnesses or principals. (Letter of Understanding dated July 26, 1973)

- (h) True copy of investigation papers will be furnished the employee under investigation, or his representative, provided request therefor is made at time investigation is held.
- (i) An employee disciplined as a result of a formal investigation shall be informed of that fact within thirty (30) days after the investigation is completed, unless a longer time limit is mutually agreed to in specific cases.
- (j) In the handling of appeals involving discipline matters, the following shall govern:
  - (1) (A) When discipline has been assessed as a result of a formal investigation and the decision as rendered by the Company is not satisfactory to the employee, an appeal may be taken from that decision. The affected employee or his representative must make the appeal in writing to the Superintendent within sixty (60) days from the date of advice of the assessment of discipline to the employee.
  - (B) If the appeal is to be denied by the Superintendent, he must within thirty (30) days from date of such appeal, notify the employee and his representative, in writing, the appeal is denied.
  - (C) If the decision is not satisfactory to the affected employee or his representative, a request for conference may be initiated within thirty (30) days from the date of the decision of the Superintendent or appeal the claim within sixty (60) days to the General Manager who is the Carrier's highest officer of appeal for cases involving discipline.

- (D) When a conference is held with the Superintendent, the sixty (60) day period for appeal to the General Manager will start running as of the date the Superintendent advises the employee and his representative in writing, the result of the conference.
- (2) If the appeal is to be denied by the General Manager, he must notify the General Chairman, in writing, within sixty (60) days of the date of the appeal, giving the reasons for such declination.
- (3) Decision by the General Manager shall be final and binding unless within eighteen (18) months from the date of said officer's written decision such claim is disposed of on the property or proceedings for the final disposition of the claim are instituted by the employee or his duly authorized representative and such officer is so notified. It is understood, however, that the parties may, by agreement, in any particular case, extend the eighteen (18) month period herein referred to.
- (4) If the decision of the General Manager is not satisfactory, the General Chairman must request a conference with respect to the specific claim within the eighteen (18) month period referred to in paragraph 3. If the General Chairman requests in writing a conference within sixty (60) days of the date of the written decision of the General Manager, the eighteen (18) month period shall not commence until the date of the written decision of the General Manager following such conference.
- (5) With respect to appeals involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.
- (6) If there is a failure to comply with the time limit provision of this agreement by either party, the matter shall be considered closed, and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of either party for the handling of other similar discipline cases.

This section (j) will not apply to requests for reinstatement on a leniency basis.

NOTE: Should either party consider the time limit provisions of Section (j) have been violated, such position must be advanced in writing at the next level of appeal or said contention will not be given further consideration.

- (k) (1) Conductors and trainmen discharged from service and subsequently reinstated must report for duty or arrange for an appropriate leave of absence within thirty (30) calendar days from date of notification of their reinstatement, and while discharged will be required to keep the trainmaster currently informed of their address and telephone number and any subsequent change by certified letter with copy to the Local Chairman.
- (2) Conductors and trainmen being reinstated to the service by other than Board Award will retain their original seniority date and standing provided they report for duty within thirty (30) days from (a) date such notice is received as evidenced by return registered receipt, or (b) letter is returned unclaimed to employing officer, in which latter event the date as shown on sending party's receipt affixed by Post Office will establish date from which the 30-day period will run. Copy of reinstatement notice will be furnished Local Chairman.

- (3) Failure to report for duty within thirty (30) calendar days from date of notification will result in forfeiture of their seniority. These provisions will be subject to the trainmen and yardmen Stay Home Rule.
- (l) If the final decision decrees that charges against the employee were not sustained, the record shall be cleared of the charge; if the final decision decrees that the employee was unjustly dismissed after the investigation, he shall be reinstated and paid for all time lost.
- (m) No employee dismissed from the service will be reinstated after being out of service six months from date of dismissal unless such action is concurred in by the General Chairman of the UTU.
- (n) (1) Employees acting as witnesses in investigations for and at the request of the Company will suffer no loss of earnings due to attending such Investigations; but, when called by the committee representing the employees or by individuals, no compensation will be paid by the Company.
- (2) Except as provided in Item 5 hereof, employees disciplined shall not be compensated for attending such investigations unless such discipline is found to be unjust.
- (3) Employees not disciplined, and who are not required to deadhead to or from the place where the investigation is held, will be reimbursed for any loss of earnings resulting from attendance at such investigation.
- (4) Employees not disciplined, and who are required to deadhead to or from the place where the investigation is held, will be compensated for loss of earnings or for deadheading, whichever is the greater.
- (5) Employees disciplined by reprimand or demerit marks only, and who are required to deadhead to or from the place where the investigation is held, will be compensated for such deadheading.
- (6) There is no provision in the respective agreements requiring compensation for living expenses.
- (7) Loss of earnings shall be determined on the following basis:
- (A) For crews assigned to regular runs or jobs, lost earnings shall be the earnings of their assignments on days not permitted to work thereon.
- (B) When all members of a pool freight train crew are required to attend formal investigations, and their turn becomes first out and is due to depart while they are not available, the turn will be placed at the bottom of the board and following crew used. If the crew becomes available for service and goes on duty before the crew used in its stead returns to the terminal, lost earnings shall be the one-way trip made by the substitute crew; if the substitute crew returns to the terminal before the crew attending the investigation becomes available for service and goes on duty, lost earnings shall be the earnings of the substitute crew.
- (C) If less than all members of a pool freight train crew are required to attend a formal investigation, and their turn becomes first out and is due to depart while they are not available, their turn will be run in its turn with extra employees

replacing those held for the investigation; the latter to await return of their turn and lost earnings shall be the earnings of the extra employees used in their stead.

- (D) Extra employees required to attend a formal investigation, and who become first out and due for service while unavailable, will be removed from the board and paid a minimum day (at passenger rates for conductors or trainmen assigned to passenger extra boards, and through freight rates for all others) for each calendar day that they are held, and when released will be placed at the bottom of the board.
  - (E) Trainmen eligible for emergency service in higher grades shall not be available therefor while attending investigations or awaiting return of their turn, and lost earnings shall be calculated solely as provided herein.
- (o) Employees who attend investigations at the request of the Company and not disciplined and who suffer no loss in earnings as a result of such attendance, will be paid on the minute basis at one-eighth (1/8th) of the daily rate applicable to the last service performed, for the actual time required to be in attendance at the investigation, the time to be computed from the time required to report for the investigation until released therefrom with a minimum of three (3) hours.

NOTE: The parties recognize the need to expedite and timely resolve discipline cases; therefore:

- (1) The provision of this agreement will apply only to those discipline cases which the General Chairman and the Director-Labor Relations agree should be presented to an Expedited Board of adjudication established under the terms hereof.
- (2) At least thirty (30) days prior to the hearing the Organization will furnish the Neutral member of the Expedited Board a brief submission, not to exceed five (5) pages (excluding exhibits), and any awards they feel will support their position.
- (3) At least thirty (30) days prior to the hearing the Carrier will furnish the Neutral Member of the Expedited Board a brief submission, not to exceed five (5) pages (excluding exhibits), and any awards they feel will support their position. In addition, the Carrier will furnish:
  - Notice of the Investigation
  - Transcript of the Investigation
  - Letter notifying the employee of the discipline assessed
  
  - Employee's service and/or discipline record
  - Copies of correspondence between the parties
- (4) If a discipline case involves a request to remove demerits and the assessment of these demerits resulted in removal of claimant from service for excessive demerits, the claim for removal of demerits and for reinstatement must be progressed to the same Board, either the Expedited Board covered by this agreement or through normal Board procedures.
- (5) The Public Law Board Agreement attached hereto will establish the Expedited Board. It is understood a Neutral will be agreed upon by the parties to act as Third Member and

Chairman of the Expedited Board. Either party may, by formal notice, request a change in the Neutral Member of the Board. (Agreement signed January 4, 1990.)