

NATIONAL RAILROAD ADJUSTMENT BOARD
First Division

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS
BROTHERHOOD OF RAILROAD TRAINMEN
THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM.—Request for reinstatement of ex-Conductor Monty N. Church of the Saratoga Division (1) with full rights and privileges (2) that he be paid for all time lost and his record cleared of the alleged charges upon which he was dismissed.

Claim is predicated on Article 27 of the current working agreement affecting the employment of Conductors, Trainmen and Yardmen, effective June 1, 1927.

FINDINGS.—The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The petitioner herein relies upon Article 27, entitled "Discipline, appeals and representation" cited from agreement between the parties and reading in part as follows:

"A conductor or trainman shall not be suspended or dismissed, except in serious cases when fault is apparent beyond reasonable doubt, until he has had a fair and impartial hearing before the proper officials. During such hearing he may be assisted by a conductor or trainman in the service of his division."

More specially the dispute turns upon what shall constitute "a fair and impartial hearing" within the meaning of said article.

For such hearing to be "fair and impartial" it is the judgment of the First Division that the carrier is under the necessity of acquainting the employe with the charge or charges upon which a disciplinary action be based, and that the employe be made acquainted with the evidence forming the base for a disciplinary action against him, and that such employe be afforded opportunity of giving testimony in person and/or by witnesses in his own defense assisted, if desired, by a conductor or trainman in the service of his division.

The evidence of record in this docket shows that complainant Conductor M. N. Church was not afforded "a fair and impartial hearing" as that term be hereinabove construed, and the discipline made subject of dispute herein should, therefore, be vacated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division
Attest: (Sgd) T. S. McFARLAND
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1937.