

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

The First Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**BROTHERHOOD OF LOCOMOTIVE FIREMEN
AND ENGINEMEN**

**THE PENNSYLVANIA RAILROAD COMPANY—
CENTRAL REGION**

STATEMENT OF CLAIM: Appeal of Toledo Division Engineman J. J. Buck from discipline by dismissal on the charge of "Violation of Rule 'G' Book of Rules" Conway Yard, Pennsylvania, January 28, 1939.

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 rule providing that an employe will not be suspended or dismissed without a fair and impartial trial contemplates that the accused will be apprized of the charges preferred against him, that he will have notice of the hearing with a reasonable time to prepare his defense, that he shall have an opportunity to be present in person and by representative, that he shall have the right to produce evidence in his own behalf and the further right to cross-examine witnesses testifying against him.

In the present case, claimant was dismissed before charges were preferred, notice given or the semblance of a trial had. Witnesses were examined when the accused had no opportunity to be present. When the accused was present, he was denied the right of cross-examination. By these acts, the carrier deprived the accused of substantial and valuable rights guaranteed in the Engineers' Schedule. The requirements of a fair and impartial trial as herein defined are inherently contained in the rule, whether specifically mentioned or not, by the very use of the words "fair and impartial trial" and they are not to be lightly disregarded by the carrier. The failure of the carrier to comply with these requirements nullifies the action taken and the penalty imposed.

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AWARD

Claimant will be reinstated with seniority rights unimpaired, with pay for all time lost after March 1, 1939.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

ATTEST: (Sgd.) T. S. McFarland
Secretary

Dated at Chicago, Illinois, this 12th day of November, 1940.