

FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

39 S. LaSalle St., Chicago 3, Illinois

The First Division consisted of the regular members and in addition Referee Robt. G. Simmons when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

ATLANTA AND WEST POINT RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Flagman C. T. Barron for reinstatement with seniority unimpaired, and for compensation for wages he would have earned as flagman from the date he was dismissed from the service until such time as he is reinstated, for alleged violation of Rule "G," at Montgomery, Alabama, on January 13th, 1942, and at Opelika, Alabama, on January 15th, 1942.

Basic claim is that discipline applied was excessive, unwarranted and unjustified in view of all the evidence, the facts and circumstances surrounding the charges.

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 imposition of discipline in this case must be set aside and the claim sustained. Article 29 is a rule designed to protect the substantive rights of the employes against arbitrary action of the carrier.

Here the employe was charged and proceeded against jointly for two separate alleged offenses. Before a valid hearing and imposition of discipline may be had one of the necessary steps is the giving of written notice, within ten days of the occurrence, to the employe of the charge or charges against him. Here the carrier made the mails its agent to deliver the notice. Admittedly, the notice concerning the alleged offense of January 13, was not given to the employe until the eleventh day after the carrier had notice of it. The carrier, upon objection by the employe, should not have inquired into that matter. While previous offenses may be considered in determining the penalty to be imposed they may not be considered in determining the question of guilt of a separate charge.

The carrier made a finding of guilt on both charges. There is no way to unscramble the penalty imposed on the one that the carrier had the right to hear and determine and on the one that was barred by the failure to give notice within time. Fairness requires that the entire proceedings be set aside.

While not required by the exact language of the rule it may be added that where an official expects to be used as a witness for the carrier in one of these investigations he should limit his activities to testifying. He should not participate in the investigation either as an examiner or in passing upon the question of fact under investigation. The position of witness with examiner and judge are not compatible. Likewise if an official unexpectedly is required as a witness for the carrier he should thereafter not further participate in the investigation, save as a witness.

AWARD

Claim sustained.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 19th day of July, 1943.