

Award No. 8260

Docket No. 14753

**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:

ORDER OF RAILWAY CONDUCTORS

BROTHERHOOD OF RAILROAD TRAINMEN

THE TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Brakeman J. S. Cooper for reinstatement with full seniority rights and pay for all time lost as a result of being discharged June 14, 1941, for alleged desertion of his post of duty at Monterey, Tennessee, June 5, 1941, and violation of Rule G on same date.

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.

Rules such as Article 31 are designed to protect the substantive rights of the employes under their contracts of employment. The rule itself is a part of that contract and there must be substantial compliance with its terms before the carrier is permitted to impose the penalties set out in the article. Here the article has been violated in so many respects that the discharge of Brakeman Cooper must be held to be void.

The article does not provide for written notice to the accused employe. It does provide that he shall be "duly apprised * * * the nature of the charge or charges that are to be brought against him." This rule is not met by the management telephoning a crew caller and instructing the caller to notify the employe of the charges. The matter is too serious and the chance of error too great to be handled in that way. The employe is entitled to know with what offense he is charged, a sufficient time in advance (within the limits of the rule) to prepare a defense. He should not be required to go questing among friends or fellow employes to get that information.

Here the employe was found guilty of deserting his post of duty and violating Rule "G." It does not appear that the employe was advised of the charge of "deserting his post of duty" until the second day of the investiga-

tion. The record does not indicate that he ever was advised that he was charged with violating Rule "G" so as to become subject to disciplinary action. He should have been properly notified that the offense charged was being considered with a view to imposing a penalty in the event it was sustained.

The rule further provides that at the investigation "all the evidence in the case will be submitted." In Award 5248 we said: "The article contemplates an impartial hearing at which time 'all evidence,' both for and against the accused, shall be presented. The hearing is conducted by and is under the control of the carrier. It is the carrier's duty to present at that hearing all material evidence of which it has knowledge bearing upon the question under investigation." This includes evidence that tends to explain, justify or deny the charges. Trainmaster Mahoney, at the beginning of the hearing on June 10th, stated that it was not necessary on the carrier's part to "get up a lot of witnesses" and that he felt the conductor's report was "sufficient." In this he erred. He should have called the other witnesses.

His statement, made even before the carrier's witnesses had testified, shows that he had prejudged the case. The conductor's report was "sufficient," other witnesses were not "necessary." It is quite obvious that an impartial, open-minded investigation was not had. The carrier should substantially comply with the letter and the spirit of this rule. We suggest a considerate study of our Awards No. 5248, 5301, 5555.

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.