

Award No. 8785
Docket No. 16144

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 Ernest M. Tipton when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Engineer J. A. Rust, who was dismissed from the service account alleged violation of rules on June 17, 1942, while handling train Second No. 74 between Waterloo, Iowa, and Freeport, Illinois for reinstatement with full seniority rights, compensation for each day lost from the service of the carrier, and erasure of all record of this discipline from his service record.

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 waived hearing thereon.

One of the officials holding this investigation made statements of fact and in instances so framed his questions so as to assume ultimate fact to be determined. Since a trier of fact should not also be a witness, the statements made by this official should be disregarded, also, those questions that assume the truth of the ultimate fact to be determined. (Awards Nos. 8376 and 8259.)

However, the conductor did testify that the caboose went over Apple River Dump from 18 to 20 miles per hour and that violated the order in regard to speed restriction at that place, which order the engineer admitted he had. There is no substantial evidence contrary to the conductor's testimony.

Also, the evidence is convincing that this engineer did not clear train number 11 at Warren by five minutes. There is substantial evidence that the engineer was warned that he did not have time to go to Warren so as to comply with Rules S87 and S89.

However, his service period and record with this company are such that under all the circumstances involved, it is the judgment of this Division he should be reinstated with his seniority rights unimpaired, but without pay.

AWARD

Claim sustained in accordance with the Findings.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 17th day of November, 1943.