

Award No. 11364

Docket No. 20734

**FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD**

39 South La Salle St., Chicago 3, Illinois

The First Division consisted of the regular members and in addition Referee John W. Yeager when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim by the Organization for all time or miles lost by passenger brakeman G. W. McCall, 4th District, due to thirty (30) day suspension given for alleged violation of Operating Rule No. 934, February 10, 1944. Claim is for February 12th and all subsequent dates account improper investigation held in violation of current schedule rules, Article 23, Section (a). Violation of same having been admitted by the investigating officer.

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.

This is a claim of brakeman G. W. McCall for time lost due to a thirty day suspension on account of his violation of Operating Rule 934. There is no contention that he did not violate the rule. In fact he has admitted it.

The employe's contention is that he was suspended without having been accorded an investigation in compliance with the terms of Article 23 (a) of the agreement. This article contains the following provisions: "* * * no trainman will be discharged, suspended or given record suspension without full investigation, at which investigation all parties interested will be notified to be present * * *."

The employes say that there was no full investigation, and that all interested parties were not notified to be present. There was no full investigation under the rule, and this the carrier does not deny. It contends that a full investigation was not required since the violation was admitted.

The findings with regard to this must be against the carrier for at least one reason. It is true that the carrier considered the violation which was admitted sufficient, and it may be that in point of fact it was, to justify the penalty imposed. On the other hand maybe it was not. But it cannot be said

with any degree of certainty on this record that all of the facts pertinent to a determination of that question were disclosed by the partial investigation or the admission of violation, or both.

In this connection, it may well be said that the carrier's is not the last word on the question of suspension. The last word under the processes of the Railway Labor Act is the word of this Division. The Division has the right to review the action of the carrier for at least the purpose of determining the question of whether or not the Carrier acted without warrant, or unreasonably or arbitrarily. This Division could not determine this question intelligently in the absence of a record of full investigation.

The carrier violated the agreement by its failure to conduct a full investigation within the meaning of Article 23 (a).

AWARD

Claim sustained.

**BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD**

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

Dated at Chicago, Illinois, this 27th day of March, 1947.