

**Award No. 11601**

**Docket No. 20572**

**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 Thomas F. Gallagher when award was rendered.**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF LOCOMOTIVE FIREMEN  
AND ENGINEMEN**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of Fireman E. E. Shineflew for ten (10) days' loss of time, from January 30 up to and including February 8, 1944, account being given ten (10) days actual suspension for alleged responsibility in accident between Trains 1/78 and 1/75 at Shaffer, Kansas, January 17, 1944.

**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.

That the investigation of the accident of January 17, 1944 in which the employe was involved, was not in accordance with article 81 of the Firemen's Agreement, in that:

(1) No specific charges against the employe were made or presented.

(2) Employe's right to confront and examine witnesses against him was denied by his required absence upon duty when such witnesses were presented.

(3) The evidence fails to disclose employe's responsibility for the accident and indicates that it was caused by the engineer involved, particularly in view of the warnings given to the engineer by the employe and the further fact that the engineer was stationed on the side where the only unobstructed view might be obtained.

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Because of the foregoing, the discipline administered was without just cause, and contrary to the Agreement.

AWARD

Claim sustained.

BY ORDER OF FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 19th day of June, 1947.