

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 Leverett Edwards when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Request that former Engineer C. E. Morris, Pittsburgh Eastern Sub-Division, be restored to his former position with seniority rights unimpaired and that he be compensated for wage loss as result of his dismissal and as provided in Rule 26 (f) of current Agreement.

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.

Carrier has called attention to service record of Engineer C. E. Morris, which goes back to October 14, 1905, and admittedly contains entries of certain infractions over a period of nearly forty years employment with the railroad. We have considered this record as we have a right to do, of course, in arriving at award in the present case; also have considered it in the light of the fact that claimant is on trial at this time on one specific charge; and it is our duty to see that the questions at issue are not unduly obscured and claimant not prejudiced by said entries to the extent that fair consideration will not now be afforded.

At the time of the incident in question the conductor had given the engineer the signal to back up, and in responding to this signal the engineer assumed the conductor had secured permission to make the cross-over. This was not an unreasonable assumption, it being part of the conductor's duties to secure such permission, and the conductor having been in position and having opportunity to do so. No collision occurred, and the flagman managed to get the approaching train stopped although under the circumstances he should have been out a greater distance. There is no reason, however, to believe that either train would have been endangered had the conductor obtained permission before giving his signal to the engineer, as the engineer believed he had done.

This is not said with the view of exonerating the engineer of all blame whatsoever, nor with the thought of attempting to place all blame on another employe or employes but is preliminary to our discussion of investigation of the occurrence held by Trainmaster Boyland as a result of which Engineer Morris was held guilty and discharged. Said investigation does not meet the requirements of being a full, fair and impartial discovery of the facts.

Transcript reveals the hearing was conducted in an overbearing manner, calculated to intimidate the witnesses, and is replete with leading questions and freely flavored with personal denunciation, criticism and opinion of the hearing official. An investigation hearing is not the proper forum in which to indulge in such tactics. In addition thereto, Fireman J. Illig and Flagman R. H. Swink, being members of the crew, should have been called to testify at the original hearing.

AWARD

Claim sustained. Engineer C. E. Morris restored to former position with seniority rights unimpaired; and to be compensated for loss of earnings while held out of service.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 15th day of December, 1947.