

Award No. 12157

Docket No. 22777

**FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD**

39 South La Salle Street, Chicago 3, Illinois

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

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of Yard Foreman J. F. Grogan for restoration to the service with payment for all time lost as result of his dismissal.

**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.

Previous unsatisfactory service is not evidence of guilt which should be considered in arriving at a decision as to whether or not an employe is responsible for some later mishap or accident. That decision must be based upon the facts and circumstances of that accident, and that alone. However, once responsibility has been properly fixed, it is then appropriate to consider the past performance of the employe in determining what the punishment should be. The facts of record in this case support the conclusion this was done.

The facts of record show that claimant was given specific information as to what was being investigated, hence the contention must be rejected that he received no specific charge.

The facts of record do not support the claim.

**AWARD**

Claim denied.

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

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

Dated at Chicago, Illinois, this 17th day of May, 1948.