

Award No. 13576

Docket No. 23596

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 Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Request for reinstatement with full seniority of Conductor J. A. Summers who was dismissed from service September 11, 1946, for the alleged violation of Rule "G."

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.

In this case, claimant was relieved from service for alleged intoxication at and before reporting time on August 28, 1946. He was duly notified and directed to report for investigation on August 31, 1946. At that hearing, the only testimony was that offered by claimant. In the course of his investigation he steadfastly denied intoxication, and refuted the charge of violating Rule G. Clearly, this evidence does not prove his guilt.

To sustain its case, carrier relies on (1) the Terminal Trainmaster's version of the incident as reported to his Superintendent under date of August 28th; (2) a physician's report of claimant's examination made about two hours before claimant was called for duty; and (3) a statement taken on September 1, 1946 from a brakeman who was a member of claimant's assigned crew. All of this information, with the possible exception of the medical report, was compiled outside the claimant's presence. The documents were not introduced into the record of the hearing, and those persons did not attend the investigation held on August 31st.

Without entering into a discussion on the probative adequacy of such evidence to establish cause for the instant discharge, it is sufficient to say that neither claimant nor his representative was afforded any opportunity for cross-examination. Under these circumstances, the attaching of weight

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to these documents would make a mockery of the "fair hearing" requirements in Rule 7.

Accordingly, the penalty should be vacated and Conductor Summers should be reinstated with seniority unimpaired, but without pay for time lost.

AWARD

Claim sustained.

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

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

Dated at Chicago, Illinois, this 12th day of May, 1950.