

**Award No. 13633**

**Docket No. 23990**

**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 Sidney St. F. Thaxter when award was rendered.

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Request for reinstatement of Brakeman I. D. Friedman, who was dismissed from service August 29, 1947, account derailment of Engine 701, Pittsburgh Yard, August 21, 1947, and pay for all time lost.

**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.

The claimant, a yard helper, was held responsible for the derailment of a yard engine and was dismissed from the carrier's service on August 29, 1947. He asks to be reinstated with pay for time lost.

The chronology is significant. The accident happened at 1:15 A.M., August 21, 1947. The same day notice was sent to the claimant of an investigation to be held the next afternoon at 2:30 P.M. It was for hearing on the following matter—"relative to engine derailment 701 Pittsburgh Yard, 1:15 A.M., August 21." It is doubtful if this was sufficient to inform the claimant that he was to be held responsible for the accident; rather it would appear to have been for the purpose of inquiry. He was the only person present at the so-called hearing except a stenographer and the trainmaster who conducted it and appears to have imposed the sentence of dismissal just a week later. The whole proceeding could not have taken over twenty minutes.

It is not necessary to attempt to fix the blame for the accident. The claimant admits some fault on his part for what was fortunately a minor accident. The engine got on the wrong track and went through a switch which was not properly set for it to go through in either direction. They were stopped almost at the switch and the foreman told the claimant to go back and go in the right track. The claimant gave the necessary instructions

to the engineer, not knowing they had passed through the switch, and the engine went off the rails.

At the hearing no other member of the crew was called, and the testimony of the claimant stands uncontradicted as to what took place at the time of the mishap. His testimony must be taken as correct. The engine was backing on the track when it went through the switch the first time and the claimant was riding the front end. The engineer, who could have seen the switch as they approached it, was in the cab; the conductor and foreman were on the ground nearby. Every one of the crew should have known what had happened and what would happen if they kept on. The claimant was the one who did not have an unobstructed view and was on the whole the one least at fault, if we should attempt to apportion the blame.

But that is not the point here. He did not have a fair and impartial hearing. There is every indication that the case had been prejudged; and the conclusion is inescapable that the carrier was looking for an excuse to get rid of an employe whom it did not want, whom it may perhaps have felt was not too competent, and gave this as an excuse for doing so.

In the first place the hearing was held on a very short notice; a very feeble attempt was made to find out what happened; the engineer, conductor and foreman, all could have given valuable information but the hearing was concluded without their help. One very important fact which subsequent events showed was in dispute was whether the claimant was riding the front or the rear of the engine as it backed down the track. It made a lot of difference in arriving at his blame; and it is doubtful if the carrier even now knows where he was riding. Worse than all, five months after the hearing had been concluded and the claimant dismissed from service a supplementary hearing was held at which the engineer and foreman both testified. The claimant was not notified and was not present. How this testimony was made a part of the record is not clear. It is certainly, under such circumstances, highly improper to have it there. Evidently the carrier was not satisfied that it had a good case before this Division without it. Surely it has not one with it. There can be no excuse for a procedure which has so little semblance of fairness, and is an obvious violation of Article 16. If awards are needed on a principle as elemental as this, they can be readily found. Awards 3509; 4306; 4596; 4597; 4611; 5297; 5301; 8259; 8260; 10348; 13354.

#### AWARD

Claim sustained.

BY ORDER OF FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 7th day of June, 1950.