

**Award No. 13845**

**Docket No. 24635**

**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 Francis J. Robertson when award was rendered.

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**UNION PACIFIC RAILROAD COMPANY—  
SOUTH CENTRAL DISTRICT**

**STATEMENT OF CLAIM:** H. L. Price, switchman, Pocatello. Request reinstatement and pay for 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.

Claimant was dismissed because of his responsibility in connection with violation of Carrier's operating rule concerning the setting of hand brakes on cars left on storage yard tracks. Upon making a cut of cars onto said tracks, the cars ran through switches until they finally came to rest. Fortunately no collision resulted from the incident. Notice of the discipline assessed was not delivered to claimant until seven days after hearing. The discipline rule requires that the result of the investigation be made known within five days. In all other respects the procedural requirements of the discipline rule were followed by Carrier.

So long as the period of delay is so short, the failure of the Carrier to literally comply with the Agreement with respect to notice of result of hearing does not vitiate the entire proceeding. The letter of dismissal was dated November 8, 1948 (five days after the date of the hearing). The record does not account for the delay in delivery. In any event, the Agreement will be satisfied if the Carrier is required to pay the claimant for those two days.

It appears that the Carrier on February 2, 1949, offered to reinstate the claimant on a leniency basis with pay for the aforementioned two days

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but otherwise without pay for lost time. This offer was refused by claimant. We do not view this offer as in any way affecting the Carrier's finding of guilt which was supported by substantial evidence. We mention it to show that the accumulation of wage loss after that date was by claimant's own choice. Independent of that offer, however, we find that under all of the facts and circumstances here present, the penalty of dismissal was too severe.

The claimant should be reinstated with seniority rights unimpaired but without pay for time lost, except for the two days of delay in giving notice of the discipline assessed for which two days he should be paid.

#### AWARD

Claim disposed of as per Findings.

BY ORDER OF FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 11th day of September, 1950.