

**Award No. 14190**

**Docket No. 22354**

**FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD**

39 South La Salle Street, Chicago 3, Illinois

The First Division consisted of Engineers' and Firemen's Supplemental Board members and in addition Referee Andrew Jackson when award was rendered.

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN**

**DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of John J. Koshinski that his record be cleared and paid for all time lost, account being suspended for (90) working days without cause.

**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.

On complaint of Engineer Steinhauser, an investigation was held to determine whether Claimant, Fireman Koshinski, while assigned with Engineer Steinhauser on Engine 1108, "proceeded to engineer's side of locomotive, at Cort, ordered Engineer Steinhauser to hook up the engine, used abusive language and threatening (sic) to do bodily harm to him with a shaker bar". Claimant was suspended for 90 working days for "using abusive language, making threats and not handling your job of firing in the proper manner".

On the basic issues, there was a direct conflict between the testimony of Steinhauser and that of Claimant. Obviously, the Carrier believed Steinhauser's testimony, which it had the right to do (provided such right was not abused). His testimony was sufficient to sustain the charges. It is not our province to weigh the evidence or pass upon the credibility of witnesses.

The Employes' contentions—that Superintendent Ledin's conduct of the investigation was biased and that RULE 18 was violated because the hearing was adjourned—cannot be sustained.

There is no evidence that Claimant's past record was considered in determining his guilt. But it was proper to consider that record in determining the punishment.

However, we consider the discipline excessive. It is to be noted that Claimant was charged very specifically with proceeding "to engineer's side of locomotive, at Cort" and ordering "Steinhauser to hook up the engine". He was found guilty, not of the specific charge, but of the much more general one of "not handling your job of firing in the proper manner". Had the latter been the charge, Claimant should have been confronted with it prior to the investigation. The evidence adduced at the investigation covered matters relating to Claimant's "job of firing" in addition to those matters referred to in the charge. The finding that Claimant did not handle his "job of firing in the proper manner" could have been based on evidence having nothing to do with the specific charge.

#### AWARD

Claimant's suspension should be reduced from 90 to 60 working days.

BY ORDER OF FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 22nd day of January, 1951.