

Award No. 14351

Docket No. 20002

**FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD**

39 South La Salle St., Chicago 3, Illinois.

The First Division consisted of Engineers' & Firemen's Supplemental Board Members and in addition Referee Paul N. Guthrie when award was rendered.

PARTIES TO DISPUTE:

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN**

**THE PENNSYLVANIA RAILROAD COMPANY—
WESTERN REGION**

SOUTHWESTERN DIVISION (Cincinnati Division Case No. 6765)

STATEMENT OF CLAIM: Engineman C. Perin was disciplined by suspension of thirty days, with time lost attending investigation applied against suspension, for violation of Rule 289 on July 2, 1942, Engine 4241, Train FC-1, at Donnelly, Ohio. Local Chairman is in disagreement that the thirty days' suspension is proper and, therefore, desires to make a further appeal.

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.

The claim here involves a suspension from service for thirty days of Engineman C. Perin for alleged violation of Rule 289 near Donnelly, Ohio, on July 2, 1942.

The primary challenge made by the petitioner runs to the nature of the trial on which penalty was assessed rather than to the merits of the case.

Time and again this Division has held a fair and impartial trial to be a fundamental prerequisite for the invocation of a penalty. When such trial or investigation has been defective to the possible prejudice of the claimant's rights, the Division has not hesitated to set the penalty aside.

It goes without saying that one of the purposes of such a trial is to develop the facts so that the proper penalty, if any, may be invoked. In the absence of such a record this Division is in no position to determine whether a particular penalty is justified or arbitrary and capricious.

In the instant case the trial record is one page where the engineman in question is the only witness. In the course of the trial he is asked only one question regarding the disputed matter. That question was preceded by an affirmative statement by the Carrier official to the effect that Perin had violated Rule 289. The question which followed was: "You agree that you violated this rule on this date?"

The Carrier's representative in effect, announced before any evidence was developed that Perin was guilty. Perin's reply was a qualified admission of guilt so far as technical violation of the rule was concerned.

The trial record cannot be said to reveal the facts with respect to what occurred on the date in question.

It is evident that the trial as revealed in the trial record does not meet the tests of a fair and impartial trial in accordance with the standards developed by this Division over the years.

AWARD

Claim sustained.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 29th day of March, 1951.