

**Award No. 14354**

**Docket No. 23589**

**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.

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN**

**THE PENNSYLVANIA RAILROAD COMPANY—  
WESTERN REGION**

**STATEMENT OF CLAIM:** Appeal of Eastern Division Passenger Fireman T. C. Goetz from discipline by suspension of 30 days on account charged with "Violation of Rule N of General Rules of Book of Rules", March 8, 1947.

**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 evidence of record does not justify a finding that Fireman T. C. Goetz was guilty of violating Rule N of the General Book of Rules on March 8, 1947.

The record reveals a good faith difference of opinion regarding the safety of locomotive 3669 which was found to have a leaking jet pipe in the fire-box on this date.

A rule such as Rule N cannot be construed in such a way as to require him in the face of penalty to do something which entails possible danger to himself and others.

The record does not prove that Goetz actually refused to take the locomotive out with the instruction that the firebox door be kept closed.

In view of the nature of the dispute and the evidence in the record this penalty is found to be arbitrary and unjustified.

Once again reference should be made to the trial record. Presumably the investigation and trial are for the purpose of determining the facts; not just a prosecution of the individual who is alleged to have violated a rule. In the instant case, there is no explanation of why the engineer on this engine was not called to give testimony, nor why the fireman who finally took the engine on the run was not called. Apart from the individuals actually involved in the disagreement, they would have been the individuals most likely to have relevant information bearing on the dispute.

Under all the facts an award on behalf of the claimant is in order.

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.