

Award No. 14491

Docket No. 25787

**FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD**

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

The First Division consisted of Conductors' & Trainmen's Supplemental Board members and in addition Referee Mortimer Stone when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Request that reprimand be removed from service record of Brakeman C. J. Kirsch, and claim for two days time lost account appearing for investigation at Terminal Trainmaster's office at Benwood, W. Va., at 1:00 P. M., November 20, 1946.

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 charged vaguely with violating Rule 104, which is entitled "Handling Switches", and includes many different requirements, while the agreement provides that he be apprised of the precise charge against him. The only factual finding of asserted rule violation was that he rode in the caboose when he should have been on the engine. It is not disputed that he was there in the presence of and with the tacit consent of his conductor on account of feeling ill. The disciplinary entry on his record as appearing in the docket discloses neither charge nor finding nor discipline. It should be expunged. Since claimant was not properly charged nor directly involved in the sideswiping, he should be paid for time lost.

AWARD

Request and claim sustained.

**BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD**

**ATTEST: (Sgd.) W. C. Frohning
Acting Executive Secretary**

Dated at Chicago, Illinois, this 2nd day of May, 1951.