

Award 14987

Docket 27667

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle St., Chicago 3, Illinois

With Referee Thomas J. Mabry

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

UNION PACIFIC RAILROAD COMPANY
CENTRAL DISTRICT

STATEMENT OF CLAIM: "Personal Record—Conductor C. H. Kibler—Request for Reinstatement to Full Seniority and vacation rights, and pay for all time lost from the service of the Union Pacific Railroad Company from October 21, 1950 and subsequent dates until reinstated."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Rule 121 provides that no such employe will be suspended or dismissed "without first having a fair and impartial hearing and his guilt established," and that he shall have the right to be "represented by an employe of his choice, who may be committeeman and will be permitted to interrogate witnesses . . ." that "the accused and his representative shall be permitted to hear the testimony of witnesses"; and that division officers will give all concerned "reasonable notice in advance of investigation so that they can arrange for their representative to be present."

This rule was clearly violated in more than one particular. Reasonable notice was not afforded. We must accept claimant's statement, under the circumstances of this case, that he could not get ready and have his representative present for the hearing on this short notice. He wanted, and was entitled to have, the representative of "his choice," not someone in place thereof as a second choice or as an alternative of having no one at all.

Claimant and his representative were not permitted to "hear" the testimony of, and interrogate, the one principal witness against him. This proceeding did not vaguely approach that "fair and impartial hearing" contemplated. And, it need not be said that the carrier purposely violated the rule in order to "get" an employe whose record might not have been too good in the eyes of the management. It is enough to say that however good the motive of carrier and however great the provocation presented, fundamentals of a rule so important to the claimant and his security as an employe cannot be so lightly by-passed, whatever the occasion otherwise demands.

Conceding, for the sake of argument, that the presence of the complaining witness, passenger Harvey, could have been obtained at no other time but on this short notice, yet that fact does not justify doing such violence to a rule of this importance. It is much better that a case of the most clearly desirable discipline fail for want of proof than that it rest upon such a hearing as was here attempted.

Claimant's own story is not at all improbable; it is in fact a reasonable one if uncontradicted. And, face to face with his accuser and with the representative of his choice present to assist, and with the opportunity to interrogate, Harvey might have told a different story. Upon that, however, we do not need to speculate. We are not required to. Claimant had the right to rest upon the protection his contract gave him for a fair and impartial hearing, and this he did not get.

AWARD: Claim sustained for full restoration of seniority and vacation rights and pay for all time lost. Such pay for lost time should be calculated in keeping with past practices in making such calculations on this property.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod
Executive Secretary

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