

Award 15508

Docket 24880

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

With Referee A. Langley Coffey

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE VIRGINIAN RAILWAY COMPANY

STATEMENT OF CLAIM: "Request for reinstatement with seniority unimpaired and pay for all time lost, for Brakeman J. M. St. Clair, who was dismissed from the service of The Virginian Railway Company on January 24, 1949."

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 held.

Claimant was charged with "violation of Rule G, insubordination and use of violent and damaging language to a supervisor * * *." He was discharged effective January 24, 1949 by letter over the signature of the carrier's superintendent who presided at the hearing.

Whether the discharge can be sustained depends upon the validity of petitioner's countercharge that the hearing at which the employe's guilt was determined was not fairly conducted.

No greater offense exists in connection with service on railroads than Rule G violations. Equally abhorrent is the failure to give the accused a fair and impartial hearing when called upon to defend against charges of personal misconduct, the proven guilt of which makes him an outcast in the eyes of society as unfit for a service related to the public's interest. Where, as here, the proof of the specific offense is dependent upon conflicting evidence the record must, as said by Referee Colby in Award 15159 on the same property, withstand "searching analysis".

That record leaves no room for doubt that claimant did not enjoy the inalienable right to have the charge proven at a fair and impartial hearing as the rules imply. One glaring deficiency is that he was not afforded the opportunity to cross examine all witnesses whose testimony the carrier used against him. Also, the hearing officer without justifiable reason undertook to have certain parole testimony stricken from the record. While the "excluded" testimony appears in the record it can only be accepted as a proffer of proof since we have nothing to indicate the hearing officer later reversed himself and considered it. These and other questionable practices in con-

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nection with an investigation to which due exception has been taken were such as to discourage a full, complete, and harmonious inquiry and cannot be dismissed as harmless error.

The guilt of the accused not having been established at a fair and impartial hearing the disciplinary action has not been sustained and is without proper support before the Division.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST (Signed) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1952.