

Award 17609

Docket 33682

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

With Referee Paul N. Guthrie

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS

CHICAGO, NORTH SHORE AND MILWAUKEE RAILWAY

STATEMENT OF CLAIM: "Claim of George W. Smith, motorman, for reinstatement with seniority unimpaired, pay for all time lost, vacation privileges restored, and no deductions for outside earnings."

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.

In this case petitioner contends that claimant George W. Smith was not properly apprised of the charges against him, nor was he given a fair and impartial hearing prior to his discharge by respondent carrier. It is stated that the notice of investigation was defective in that claimant was not informed that he was charged with culpable negligence. The fact is clear however that said notice specifically stated that the purpose of the investigation was "to determine the responsibility of damage to locomotive No. 456, on September 28, 1954, and review of your record."

Furthermore, a review of the transcript of the investigation leaves no doubt that claimant was fully aware of the nature of the investigation, and of the fact that he was being charged with responsibility for the accident.

Petitioner asserts also that important witnesses were not called to testify. The record does not support this assertion. Furthermore, claimant and his representative were given full and adequate opportunity to call additional witnesses, and to present additional evidence. Claimant stated that he was satisfied with the investigation and its conduct.

Therefore, there is no basis in this record to justify a change in the penalty because of a defective or unfair investigation.

17609—2

The evidence of record shows clearly that claimant's negligence was the cause of the accident which occurred. There appear to be no mitigating circumstances which would justify the setting aside of the penalty given.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August, 1956.