

Award 20052

Docket 30961

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

With Referee Jacob Seidenberg

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Engineer F. L. Minor that restrictions barring him from passenger service be lifted and paid for time lost October 13, 1951, Trains 43-36, Macon-Atlanta, 202 freight miles account of required to attend investigation for alleged injury sustained by Pullman Porter W. R. Wrens; also, claim for 100 miles run-around each time he was available and had rested and younger men used in passenger service from date of restrictions to date such restrictions are lifted."

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.

We find that that part of the claim relating to runaround by younger men for 100 miles each time claimant was available and rested, was decided by Special Board of Adjustment No. 390 in Case No. SE-14-E on July 23, 1961, wherein the Special Board held that the runaround claims were barred by time limits under Section 17 of the 1948 Agreement. The Special Board further held, carrier Members dissenting, that the claim for the 202 freight miles would have to be determined by this Division through its decision as to the application of the discipline rule.

We find that the notice and the investigation did not violate Rule 31 and did apprise the claimant sufficiently to enable him to answer questions as to his conduct causing the sudden stop, which was the subject of the inquiry. While the record may be susceptible to the allegation that there was a variance between the notice and the subject matter developed at the inquiry, on balance we cannot hold that this variance was so material as to prevent the claimant, acting as a reasonable man, from preparing, together with his representative, an appropriate and adequate defense.

It is also true that the transcript of the investigation indicates that the claimant's representative expressed some doubts as to whether the investigation was proceeding along lines indicated in the notice, but he did not make a

clear and unequivocal objection as to the manner in which the inquiry was being conducted concerning the introduction of allegedly new and different charges. Objections as to the character and conduct of the investigatory proceedings must be timely or are held to have been waived.

It is true that the notice for the hearing dealt with injury caused by the sudden or emergency application of the brakes while the train was entering the siding. Nevertheless we find that there was a casual and logical relationship in seeking to ascertain what precipitated this sudden or emergency stop and such questions relating to the speed of the train as it entered the siding; the speed at which it passed an approach signal; the speed and directions necessary to back up the train. We believe that the lines of inquiry were relevant in determining why the claimant had made a sudden or emergency stop. Nobody knew better than the claimant why he had done that which he did. And even when the notice stated that it would deal with the injury caused by the sudden stop, the claimant should not be able to plead surprise at all the antecedent events which had a material bearing on his actions leading up to the incident in question.

We believe that, subject to the requirements of the applicable rules and basic procedural due process relating to investigatory proceedings, the carrier must be allowed latitude in its efforts to determine the extent and scope of the employe's conduct when mishaps have occurred on its property. Its responsibility as a common carrier of persons and property demands no less.

We therefore find that the carrier's investigation did not unduly subject the claimant to an unreasonable burden in order either to defend against or to meet the charges raised in the course of the investigation.

AWARD: Claim for runarounds dismissed per Findings. Claim for 202 miles denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois this 6th day of December 1961.