

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

With Referee Jacob Seidenberg

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "Appeal of Columbus Division Fireman J. H. Ford from discipline of twenty-one (21) days suspension imposed in connection with the following offense: 'Failing to properly call signal No. 6 at Newman Interlocking resulting in train No. 3 engine 5845-A passing signal in Stop Position'."

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.

The claimant fireman is appealing the imposition of a twenty-one day suspension from duty for the following charged offense: "Failing to properly call signal No. 6 at Newman Interlocking resulting in train No. 3 . . . passing signal in Stop Position."

Upon reviewing this record the Division finds that the carrier committed a fatal defect in the conduct of the disciplinary proceedings by not summoning the engineer of the train, who was available and under its control, to testify.

If the crux of the offense was the failure of the claimant to call properly the signal, then the trial record, if it is to indicate a complete and adequate hearing, should reflect the testimony of the person to whom the signal call was given. It should reflect testimony as to when and what the engineer heard from the claimant regarding the signal aspect; it should indicate what the engineer himself saw regarding the signal. The evidence which the engineer was in a position to offer was as material as any offered in the course of the proceedings.

While the course of the disciplinary proceedings is under the control and direction of the carrier, nevertheless it is not permitted to cull or select data for presentation which only tends to demonstrate or prove the fault or wrongdoing of the employe being tried. In this case the authority to invoke disci-

plinary proceedings flows from Regulation 6-A-1 of the Agreement, which provides:

“Firemen will not be suspended nor dismissed from service without a fair and impartial trial . . .”

This provision is a guarantee by the carrier that it will deal impartially with the employe in accordance with the commonly accepted standards of fairness. It means that not only will there be a complete investigation, but that there will also be a complete and a fair trial. And that in the conduct of that trial it will present all the material facts—those which favor as well as those which are adverse to the claimant—in order that it may determine upon the full record whether the imposition of sanctions is warranted.

Not only do the contractual provisions of a fair trial demand the submission of all relevant information, but such a submission is also necessary for the protection of the carrier's interests. It is not unlikely that the carrier, after considering the full record, might arrive at a different decision concerning the imposition of discipline than it would have absent the receipt of the excluded information, and thus avoid contingent liability for claims which might be made against it.

While this record indicates that the detail and degree of specificity of the carrier's disciplinary machinery is somewhat different than that of other carriers, the basic authority is derived from the same source—a voluntary agreement between the parties. And like other carrier disciplinary machinery it has the same purpose of seeking to ascertain all the relevant facts pertaining to the incident in question, as well as not assuming either the guilt or innocence of the defendant until all the material evidence has been submitted and the proceedings closed.

The Division also holds that the engineer's testimony constituted such a basic and essential element in the fact finding process, that this testimony cannot be considered waived by the failure of the claimant, on his own initiative, to introduce it. The responsibility placed upon the carrier for insuring a fair and complete trial means that it must meet this responsibility without regard to the action or inaction of the claimant. This responsibility is particularly grave when the witness to be summoned is under the control of the carrier.

The Division, therefore, concludes, without passing on the substantive facts surrounding the claim, that the carrier's failure to call the engineer to testify during the proceedings, in view of the fact that he possessed material information concerning the claimant's calling the signal properly, denied the claimant the fair and impartial trial to which he was contractually entitled.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of February 1962.