

Award 20168

Docket 32116

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 & ENGINEERS
UNION PACIFIC RAILROAD COMPANY—EASTERN DISTRICT**

STATEMENT OF CLAIM: "Compensation for time lost by Engineer R. D. Chambers during the period he was withheld from service May 20, 1953 to August 26, 1953, inclusive."

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 Division finds that these two claims are sustainable without ruling on their substantive merits. The Division finds itself compelled to hold that, the conduct of the hearing officer, prior to and during the investigation, revealed such a prejudicial attitude, so as to deny the claimant his constitutional as well as his contractual right to a fair hearing as prescribed in Rule 97.

The conferring by the hearing officer with the prosecuting witness prior to the start of the hearing, coupled with his statements, made in the course of the hearing, to which the petitioner made timely objections, that the prosecuting witness was and the claimant Engineer was not telling the truth, clearly transcend the judicial proprieties and violate the standard of conduct, required of a hearing officer, presiding at an investigation called for the purpose of ascertaining all the facts, favorable as well as adverse, to the claimants.

Such conduct is not a slight irregularity, as the carrier maintains, but is a substantial breach, not only of the pertinent rule, but also of the commonly accepted standards of procedural due process.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: E. A. Killeen
Acting Executive Secretary

Dated at Chicago, Illinois, this 6th day of July, 1962.