

Award 20471

Docket 35346

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

With Referee Charles W. Anrod

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: "Claim is made for and in behalf of Conductor F. J. Baldwin for all earnings lost due to suspension and that his record be cleared and that he be paid for all earnings lost in attending this investigation and during his suspension."

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, F. J. Baldwin, has been employed by the carrier as a conductor and was assigned to through freight Train No. 81 from Silvis, Illinois, to Des Moines, Iowa, on June 22, 1957. After an investigation hearing, he was found guilty by the carrier of having delayed trains Nos. 505 and 2 at Iowa City, Iowa, in violation of Rule 86 and General Rule "B" of the Operating Rules. He was given a five day suspension.

He filed the instant claim in which he contended that he was not responsible for the delay under consideration and that he did not violate said Rules. He requested compensation for all earnings lost due to his suspension as well as for the time lost in attending the investigation hearing. He also requested that his record be cleared. The carrier denied the requests.

It is firmly settled in the law of labor relations that, in discipline cases, the burden of proof squarely rests upon the employer convincingly to demonstrate that an employe is guilty of the offense upon which his disciplinary penalty is based. Mere suspicion is insufficient to take the place of such proof. This principle is so well established and so universally accepted in the industrial relations world as to require no detailed discussion.

Applying said principle to this case, we have reached the following conclusions:

The record shows that the situation was confused and complicated on the night in question. Train No. 505 was running behind schedule for reasons beyond the claimant's control. Moreover, part of the additional delay was caused by hot journals on the claimant's train for which he also cannot be held responsible. Furthermore, the available evidence does not exclude the possibility that the additional delay was, at least partly, the fault of the dispatcher. Finally and most significantly, operator D. R. Stevens, a carrier witness, testified at the investigation hearing that, in his opinion, the major cause of the delay in question was the lack of a radio in the caboose (see: Transcript, p. 10). In view of all these circumstances, the most that can be said in favor of the Carrier's position is that there exists a suspicion that the claimant might have caused the additional delay in violation of Rule 86 and/or Rule "B." But mere suspicion is insufficient to prove his guilt.

In summary, we are of the opinion that the carrier has failed convincingly to demonstrate that the claimant is guilty of the offense with which he was charged. Accordingly, the carrier's disciplinary action here in dispute was without justification.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **FIRST DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1964.