



Award 21046

Docket 35675

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

433 W. Van Buren Street, Chicago, Illinois 60607

With Referee Carroll R. Daugherty

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim by and in behalf of Conductor E. H. Kane for all time lost while attending investigation and the removal of discipline assessed against his record for alleged responsibility and delay to No. 815 on January 23, 1956."

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.

Before the merits of this case can properly be considered here, an important procedural point raised by petitioner must be ruled on. If the Division comes to agree with petitioner's contentions thereon, of course, the merits will not be reviewed; and the claim will then be upheld.

Petitioner argues in substance that carrier's hearing officer should have been some carrier official other than Trainmaster Schoech because the latter had been involved in the dispute with claimant's engineer; and this being so, said trainmaster should have been a witness, subject to questioning by an impartial hearing officer and to cross examination by claimant's representative, instead of being a prosecutor-interrogator who, having had prior knowledge of the case, was in a position to direct the investigation and question witnesses on the basis of possible preconceptions, as well as to avoid anyone's questioning him.

After studying the transcript of the investigation the Division is persuaded that petitioner's position is valid. At this late date there is little excuse for the managerial personnel of a carrier to ignore the principle that in a discipline case carrier is essentially, and must conduct itself like, a trial court. Among several things this means that the carrier official who conducts an investigation of a charge made by a carrier against an employe (1) should not normally have been involved in the occurrences leading up to the leveling

of the charge and (2) should comport himself at the investigation, in his questioning of all witnesses (managerial as well as employe), in a truly objective and aloof manner, just as would an outside judge. If, as here, the evidence shows that the investigating officer did not so behave, then this Division, as a court of appeals, must find the trial court subject to procedural error and reversal.

In the light of all the above an affirmative award must issue here.

AWARD: Claim sustained.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1967.