

Award 21398

Docket 37927

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Conductor D. A. Hashey, Lake Shore Division (Fond Du Lac District) for reinstatement to service with all former seniority, rights and privileges, and pay for all time lost January 29, 1960 to date he is permitted to resume service. (BRT Case 212-60)."

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.

Respondent's Superintendent J. C. Black ordered claimant and his crew to restore conditions to status quo whereupon Mr. Black had the switching at Appleton done over with three trainmasters and himself as witnesses. Mr. Black directed the crew when the work was redone. The second performance accomplished the job in considerably less time than the crew consumed while handling it under instructions of claimant conductor. An investigation was held, claimant being charged with delay to his train. Mr. Black preferred the charges, conducted the hearing, took part as witness, and issued the notice of dismissal dated January 29, 1960.

Under date of May 12, 1960, Mr. Black offered to reinstate claimant on a leniency basis, without payment for time lost. The offer was rejected and a counterproposal made that claimant be reinstated with the understanding that his claim for payment would be further progressed. Mr. Black refused to accept it. The claim for reinstatement, with seniority unimpaired and payment for time lost, was progressed on the property and, on February 25, 1961, claimant was restored to service.

Claim is presented for payment for the time out of service because of the discharge on a basic contention that the handling of the investigation, with particular reference to the role played by Mr. Black, was in violation of claimant's right to a fair and impartial hearing under the provisions of Rule 83 and First Division Awards 8259, 8376, 10616, 11910, 15655, 16699 and 19378. (Award 15655 should have been cited as 15656).

In view of the record and the holdings of the awards above referred to, we find in favor of petitioner and the claim is sustained.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1968.