

**Award No. 183**

**Docket No. 177**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION**

The Fourth Division consisted of the regular members and in addition Referee James H. Wolfe when award was rendered.

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**PARTIES TO DISPUTE:**

**THE AMERICAN RAILWAY SUPERVISORS'  
ASSOCIATION, INC.**

**CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY**

**(H. D. Pettibone, Trustee)**

**STATEMENT OF CLAIM:** Claim of the Grand Lodge Appeals Committee and request that:

(1) Roundhouse Foreman, H. C. Schlie be reinstated to his former position at Lafayette, Indiana, that which he was unjustifiably demoted from, effective January 16, 1941; and

(2) The carrier be required by appropriate award and order to compensate the employe all wage loss sustained retroactively to January 16, 1941.

**EMPLOYES' STATEMENT OF FACTS:** There is in evidence an agreement between the parties bearing effective date of May 1, 1940.

For ready reference we refer to Scope Rule, Rule 1, of the controlling agreement covering the affected employe.

The primary questions and principles before the Board in this issue can be condensed as follows:

1. Roundhouse Foreman H. C. Schlie has been employed continuously by this carrier since March 1, 1906, with the exception of period from January 11, 1915, to September 15, 1916, (was laid off during latter period account reduction in forces). Entire service is approximately 34½ years at point shown in the claim.
2. The employe was promoted to Assistant Roundhouse Foreman December 1, 1916, and worked continuously as a supervisor until January 16, 1941. At such date he was demoted and forced to the ranks as a machinist.
3. During period of approximately 25 years as a supervisory employe he had never been investigated for any charges of incompetency, or for violating the carrier's "inflexible laws and rules," except as shown in Employes' Exhibit "B-1," which was the discipline administered causing this dispute.
4. The employe affected in this issue was the General Chairman of the committee that negotiated the ORIGINAL EFFECTIVE AGREEMENT, and we certify, that his leadership in gaining bene-

- fits intended by a collective agreement was more responsible for his demotion by carrier than charges of incompetency and disregard to rules and instructions.
5. Employes' Exhibit "A," fails to furnish sufficient proof that a Federal Inspector actually issued a Form 5 on an engine on which employes performed work, and that such work was his specific responsibility.
  6. Employes' Exhibit "A-1," shows conclusively that another foreman had supervision over the work performed on "Engine 572," and in fifth question of said interrogation, it can be easily noticed that TWO OFFICIALS of carrier were acquainted with the fact that the CYLINDER HEAD on the particular engine was cracked, yet they only cautioned the supervisor that the crack probably could not be welded successfully. However, these same two officials were in authority, and it is contended by them throughout both statements evidenced in exhibits "A" and "A-1," that welding cracked cylinder heads was prohibited. The supervisor had to have the ENGINE IN WORKABLE CONDITION FOR ITS RUN, and without PARTS TO REPLACE THE CRACKED CYLINDER HEAD ON HAND it was welded, the officials knowing there was no head to replace the cracked one.
  7. The entire responsibility is upon the carrier as it had no part in stock to MAKE THE PROPER REPAIRS. The supervisor made the only repairs possible under the existent conditions, and the Federal Inspector would not pass upon such repairs. What a pretext then, TO DEMOTE THE SUPERVISOR BECAUSE he had failed to have the engine pass inspection.
  8. It must also be NOTICED that the supervisor, as evidenced in Exhibit "A-1," actually had the Form 5 issued by the Federal Inspector (while foreman Schlie had no form issued), yet the carrier only issued "A 30 DAY BOOK SUSPENSION AGAINST HIS RECORD." There is sufficient proof for your Board of UNJUSTIFIED DISCRIMINATION, the Employes' Exhibit "B" and "B-1" supporting our statement.
  9. Supervisor M. J. Brush was suspended from the representative organization for non payment of dues prior to this investigation and had also been a committee member at one time. We contend that Brush's severing his connections with the Association had considerable part in Foreman Schlie's DEMOTION for Brush's responsibility, together with carrier's lack of EQUIPMENT IN STOCK TO MAKE ENGINE REPAIRS. Brush had only a reprimand against his record FOR 30 DAYS, which was to be REMOVED after that period.
  10. Here is the record of H. C. Schlie on the Day Roundhouse Foreman position for the 22 months preceding his DEMOTION:
    - 155 Locomotives under his responsibility inspected by Federal Inspector.
    - 148 of those Locomotives were found O. K.
    - 6 of those Locomotives had 13 non reportable defects requested to be repaired.
    - 1 Locomotive had a Form 5 issued on account of too much lateral on back end of main rod.
  11. Here is the record in the same roundhouse during the month of February, 1941, subsequent to the demotion of Foreman Schlie. Federal Inspectors, conducted a two day inspection of locomotives at Lafayette, Indiana, and as a result ISSUED FIVE FORMS

**NO. 5**, yet there was no foreman demoted with over 34 years service as an employe, 25 as supervisor. Why? The employe representative of the supervisors had been removed by the action shown in this record. Possibly the Forms 5 issued were again on account of **LACK OF MATERIAL TO MAKE REPAIRS**, and lack of engines to provide ample time to make required repairs, all of which is not here involved.

**POSITION OF EMPLOYEES:** Employes' Exhibit "D-1" evidences this employe's competency relative to supervision, in fact, it appears that his extensive knowledge was superior to others in said exhibit, which includes officials.

Employes' Exhibit "A-A" discloses the carrier recognized the mistake of unjust discipline and was willing to restore this foreman to his position, **PROVIDING**, this Association would compromise the **WAGE LOSS** of the employe and certain other compromises indicated in said exhibit. However, we certify that this Association, or any employe which we represent, are not required to **COMPROMISE** mistakes of any carrier. Therefore, as intended by the Railway Labor Act, the carrier in this dispute should be required by the Board to answer for violation of the collective agreement with its employes.

We recognize the carrier's prerogative in requiring all of its employes to meet the instructions issued from time to time. When a carrier fails to furnish material to keep its equipment in proper repair to pass Federal Inspections and then demotes a supervisor upon such a pretext, we say to your Board that such conduct was never intended by collective bargaining. The correct analysis of basic principle in this issue is discrimination against claimant account being an employe representative.

Dockets Nos. 174 and 175, now on your Board, furnish information relative to arbitrary discriminative action taken by a carrier towards employes of the supervisory class similar to this issue, and Award No. 775 of the Third Division denotes that a carrier may not be unilateral in judgment when issuing discipline to an employe who has given many years of service to the carrier.

Award No. 92 (Docket 92), of your Board, precludes action upon the part of a carrier discriminating against its employes for taking part in collective bargaining benefits as intended by the Railway Labor Act.

We contend the entire record of evidence relative to this claim merits sustaining in favor of the employes.

We certify that the dispute has been handled as consistently as possible on our part, in accordance with instructions as set forth and contained in Section 3, first, Paragraph (i) of the Railway Labor Act, Amended, June 1934.

**CARRIER'S STATEMENT OF FACTS:** H. C. Schlie was employed by the Carrier at Lafayette, Indiana as a machinist on March 1, 1906. His subsequent service has all been at the Lafayette terminal, and during 1917 he was appointed night round house foreman at Lafayette at a salary of \$125.00 per month. He served in that capacity at various salaries until October 1, 1938, when he was appointed to position of Acting Day Foreman. On December 1, 1938, he was appointed to the position of Round House Foreman at a salary of \$289.75 per month, which position carried the responsibility of General Foreman at the Lafayette round house. On May 15, 1940, the title of this position was changed on the records to conform with the duties involved, and Mr. Schlie retained his same monthly rate of \$289.75 until he was transferred back to night foreman on August 16, 1940, due to the General Foreman's duties at the round house being taken over by the

General Foreman of the Locomotive Back Shop. The night foreman rate was \$266.00 per month, and Mr. Schlie stayed on this position until January 16, 1941, when for cause he was demoted to machinist.

Mr. Schlie was demoted, effective January 16, 1941, after a series of reprimands, which finally culminated in an investigation held in the office of the Master Mechanic on December 9, 1940. A written record was kept of this investigation, a copy of which is submitted, designated at Exhibit No. 1. Mr. Schlie was properly notified, and was represented by the local President and General Chairman of The American Railway Supervisors' Association, Inc., Lodge 121. As a result of this investigation, Mr. Daniel, Master Mechanic wrote General Foreman Oakes, who was Mr. Schlie's immediate superior officer, on January 9th to the effect that Mr. Oakes did demote Mr. Schlie as a supervisor. Copy of this letter is submitted and designated as Exhibit No. 2. As a result, Mr. Oakes, General Foreman, in turn wrote Mr. Schlie on January 10th informing him that he was being removed from service as a supervisor and stating the cause therefor. Copy of this letter is submitted and designated as Exhibit No. 3. As stated above, as a consequence Mr. Schlie last worked as a supervisor January 15, 1941, and was permitted to exercise his seniority as a machinist shortly thereafter. On January 23rd, 1941, Mr. H. C. Schlie wrote directly to Master Mechanic R. W. Daniel asking that the case be reopened. A copy of this letter is submitted and designated as Exhibit No. 4. On January 30th, 1941, Master Mechanic Daniel answered this letter through General Foreman Oakes, asking him to advise Mr. Schlie and Mr. L. L. Salomon, Local President and General Chairman of the Supervisors, that insofar as he, the Master Mechanic, was concerned, the case was closed. A copy of that letter is submitted and designated as Exhibit No. 5. On January 31st, 1941, complying with Mr. Daniel's letter, General Foreman Oakes wrote Mr. Schlie, which among other things, advised him that insofar as Mr. Daniel, Master Mechanic, was concerned, the case could be considered closed. A copy of this letter is submitted and designated as Exhibit No. 6. Subsequent to this date, January 31st, 1941, the carrier awaited further action by the Supervisors' Association in accordance with Rule 15 of the current agreement in effect. There was no further action taken by the Supervisors' Association until March 13th, 1941, on which date Mr. L. L. Salomon, Local President and General Chairman of the Supervisors' Organization wrote a letter to Master Mechanic Daniel, and one letter to Superintendent of Motive Power English. This action taken by Mr. Salomon occurred forty-one (41) days after Mr. Schlie had been notified that Master Mechanic Daniel had closed the case insofar as his further action was concerned. This action, 41 days later, is the first action taken to appeal this case in the regular order of procedure with Superintendent of Motive Power W. M. English. A copy of the letter to Master Mechanic Daniel of March 13th and the letter to W. M. English, Supt. Motive Power, on the same date, are submitted and designated as Exhibits No. 8 and No. 9, respectively. In the meantime Mr. Schlie's former position as night round house foreman had been temporarily filled by a supervisor, and on March 4, 1941, the position was formally filled by bid. Mr. Schlie has continued to work as a machinist to the present time.

**POSITION OF CARRIER:** The carrier has a working agreement with The American Railway Supervisors' Association, Inc., governing working conditions of monthly paid mechanical department foremen and assistant foremen below the rank of General Foremen, effective May 1, 1940, and in effect thereafter without change, with the exception of Memorandum of Agreement, which was made effective on the same date and is attached thereto. The claim of the employes and the description of their dispute does not claim the violation of any specific rule and none have been specifically named therein. The carrier refers to certain rules from this agreement, Rules 1, 15 and 16, which may bear on this dispute.

Before discussing the merits as to the cause and reasons for Mr. Schlie's demotion, the Carrier wishes to emphatically point out that this dispute was not handled by the employes in accordance with the working agreement in effect. The Carrier very deliberately and purposely delayed further action in this matter subsequent to the Master Mechanic's notification to Mr. Schlie January 31st, 1941 until the Carrier had every reason to believe that the grievance or dispute had been dropped by the Supervisors' Association. The first paragraph of Rule 15 very specifically states that "if decision rendered is not satisfactory, appeal may be taken in the regular order of procedure, provided such appeal is made in writing within 30 days after the reviewing officer has rendered his decision." The third paragraph of Rule 15 also states to the effect that the privilege of appeal provides that such appeal must be made in writing and within thirty days after the reviewing officer has rendered his decision. Rule 16 designates the officers of the railway company delegated to handle such matters, and the second paragraph of Rule 16 states how the meetings shall be arranged. The carrier was very careful not to permanently fill this position until after the 30 days required had expired. The Carrier purposely awaited action, because the supervisor next in seniority (who had been furloughed) that would likely bid and assume Mr. Schlie's former position as night foreman was working on a good job in another industry in the city of Lafayette, and this supervisor personally remonstrated that it would be a gross injustice to call him back temporarily, provided Mr. Schlie's grievance was to be again reopened. The result would have been that this supervisor, who was called back, would have been filling a job of temporary status, and might soon be out of work, both with the Carrier again and with the other industry by whom he was then employed. Therefore, the Carrier, after the period of 30 days, had every reason to believe that Mr. Schlie's dismissal was justified, unappealed, and that the Supervisors' Association were of the same opinion. The Carrier states that Rule 15 of the Supervisors' Association current agreement was written in the agreement to precisely cover a case of this kind, and that the rule actually means that if no appeal is made in the regular order of procedure after the reviewing officer has rendered his decision, any claim growing out of a dispute or grievance therein involved is barred by the statute of limitation of 30 days incorporated in the Rule. The Carrier therefore respectfully requests the Board to **dismiss the claim on that basis.**

In line with the foregoing, Supt. Motive Power English answered Mr. Salomon's letter of March 13th, stating that the matter had not been appealed within 30 days in accordance with Rule 15, and that his request of March 13th was denied. That letter is submitted and designated as Exhibit No. 10.

Since then, March 13, 1941, Mr. J. P. Tahney, Grand President of The American Railway Supervisors' Association, Inc., has had considerable correspondence in the nature of an appeal from the Supt. Motive Power's decision with Mr. A. Anderson, Ass't. Chief Operating Officer, who is the highest officer designated to handle appeals in labor matters for the Carrier, and also some correspondence with Mr. Self, Executive Assistant. In addition to the above correspondence, various meetings were subsequently arranged and held with Mr. Tahney in the nature of making some disposition of this and other disputes on the property. Without, at this time, quoting such correspondence and results of conference, the Carrier states that the ultimate result was failure to settle the dispute.

Without prejudice to the above statements, the Carrier wishes to point out that Mr. H. C. Schlie had been a foreman or General Foreman in the Lafayette round house continuously since 1917, and was fully acquainted with all instructions and requirements issued from time to time by his superior officers, and was thoroughly familiar with the requirements of the Bureau of Locomotive Inspection, Interstate Commerce Commission. For a

period of less than a year prior to Mr. Schlie's demotion, Federal Inspectors of the Bureau of Locomotive Inspection, Interstate Commerce Commission, had issued eight Form 5's covering locomotives at the Lafayette terminal, and had reported innumerable other bad violations of Federal Law. This Federal form 5 is issued by a Federal Inspector in order to preclude the Carrier from operating the locomotive against which the form is issued until certain definite repairs stated thereon are made. A typed reproduction of one of these forms is submitted and designated as Exhibit No. 11. In a period of less than two months subsequent to Mr. Schlie's demotion, two additional form 5's were issued at Lafayette, but since then, March 5, 1941, there have been no form 5's issued at Lafayette, and the number of defects reported was greatly reduced. Lafayette is the principal locomotive repair point of the Carrier. In this connection, the Carrier wishes to cite their Exhibit No. 7, which illustrates the situation. The Carrier calls attention to this matter, not in that it feels that Mr. Schlie was solely responsible for the situation, but Mr. Schlie was an experienced foreman and thoroughly familiar with the requirements of his position, and the Carrier depended largely upon his supervision to eliminate a disgraceful situation in regard to violation of the Federal Laws, and the record shows that the Carrier had made repeated attempts, even in writing, to have Mr. Schlie comply with instructions and eliminate the continual criticism and tie-up of engines caused by Federal Inspectors upon each visit to the terminal. Mr. Schlie's repeated negligence in complying with instructions of the Carrier, and not complying with the requirements of the Bureau of Locomotive Inspection, caused the Federal Inspectors to take action that seriously interfered with the proper furnishing of power at this, and other, terminals in order to properly handle the Carrier's business. The matter was quite serious and was growing steadily worse, and it was necessary that definite action be taken in order to satisfy the Bureau of Locomotive Inspection that this Carrier could conduct its business by operating locomotives that would comply with the Bureau of Locomotive Inspection's requirements. In order to correct and eliminate such a condition, the Master Mechanic at Lafayette had issued instructions to the supervisors, including the supervisors at Lafayette round-house. The following important written general instructions by Master Mechanic Daniel or other responsible supervisors on this matter are submitted as Exhibits:

Letter of January 25, 1938	—Exhibit No. 12
“ “ September 21, 1940—	“ No. 13
“ “ September 23, 1940—	“ No. 14
“ “ November 20, 1940—	“ No. 15

In addition, we submit copy of letter of August 9th, 1939, written by Master Mechanic Daniel direct to Mr. Schlie, designated as Exhibit No. 16, calling his attention to Federal defects found on locomotives he had dispatched. Repeatedly Master Mechanic Daniel had personally and often criticized Foreman Schlie for his apparent willful and repeated flaunting of Federal requirements. Mr. Schlie continued to flaunt these instructions and requirements of the Federal Inspectors, although the Federal Inspectors had repeatedly cautioned Schlie personally upon many occasions, and had in turn handled the matter personally with the Master Mechanic and the Supt. Motive Power, and pointed out definitely the negligence of Mr. Schlie.

The third paragraph of Employes' "Description of Dispute" states that the affected employe had worked as a foreman over 25 years without ever being investigated as a result of any failure or negligence on his part as a supervisory employe. A statement to this effect by anyone to anyone experienced in railway operation is preposterous. Any experienced railroad man knows that foremen's mistakes are investigated, and that corrective action is taken to avoid similar mistakes in the future. Mr. Schlie was absolutely no exception in this regard. He had been respectfully criticized and taken to task from time to time, and for several months prior to his demotion had

been severely reprimanded and criticized repeatedly, not only by railroad officers but by the Federal Inspectors. Exhibit No. 16 shows one instance where one of these matters was handled in writing, and it so happens that the Carrier has preserved that record. We have others that cannot be so readily provided as concrete evidence, but they were numerous. In the event there is still any doubt in any practical railroad man's mind, such as are represented on this Board, the Carrier wishes to further cite a few specific exhibits wherein Mr. Schlie was entirely responsible, and wherein each case Mr. Schlie was severely criticized by the Carrier officers, or Federal Inspectors, or both:—

1. Exhibit No. 17 shows copy of work report of locomotive 607 on September 9, 1940. The check mark shown in the exhibit was in red pencil and was placed there by the Federal Inspector, showing that the engine had been dispatched and the work report was not signed by the foreman. This is a direct violation of Rule 104 of the Laws, Rules, and Instructions of the Bureau of Locomotive Inspection, and a direct violation of Carrier's instructions of January 25, 1938, Carrier's Exhibit No. 12.

2. Exhibit No. 18 shows copy of work report of engine 579 of September 10, 1940. This work report likewise was checked by the Federal Inspector in red pencil as shown on the exhibit wherein Mr. Schlie failed to sign the work report before the engine was dispatched, and is another direct violation of Rule 104, Bureau of Locomotive Inspection's Laws, Rules, and Instructions, and in addition, is a violation of Carrier's instructions of January 25, 1938, Exhibit No. 12.

3. Exhibit No. 19 is a copy of work report of engine 562 September 16, 1940. The check marks shown on the Exhibit were in red pencil and placed there by Federal Inspector. One item shows Federal defect on account of the stoker pipe leaking, with a notation by Mr. Schlie that he could not examine account of fire in the engine. Another item shows fountain dry pipe leaking with no indication on the report that anything whatsoever had been done, and in fact there had been nothing done, although Mr. Schlie dispatched this engine at 6:15 A. M. the following morning. Mr. Schlie had made the notation showing cause of work not being done, stating that repairs would be made on the next washout. The Federal Inspector checked and found that the next washout would be October 10th, and so noted in the upper left hand corner of the report. He seriously criticized Mr. Schlie's intention to run this engine over a period of almost a month before contemplating making repairs to this very serious and dangerous Federal defect. The Master Mechanic immediately took this engine out of service, for proper repairs. This report shows further Federal violations, all of which Mr. Schlie was responsible for, covering Rules 104 and 43, of the Federal Laws, Rules, and Instructions, Bureau of Locomotive Inspection. In connection with this work report Mr. E. E. Kauffman, Assistant Master Mechanic, wrote a pencil notation to Master Mechanic Daniel under date of September 19th. You can see that Mr. Schlie's negligence precipitated the utter lack of confidence of Federal Inspectors in regard to Mr. Schlie. The Mr. Davidson, mentioned in Mr. Kauffman's letter, was Assistant Chief of the Bureau of Locomotive Inspection, who was sent here from Washington, D. C. to personally investigate the situation. He personally criticized Mr. Schlie and all concerned. This above letter referred to is Carrier's Exhibit No. 20.

4. Exhibit 21. This shows copy of work report of engine 510 on October 2, 1940. The underscoring and the check mark shown on this Exhibit were placed there in red pencil by the Federal Inspector. The Federal Inspector took exception to the fact that both-pops, or safety valves, had been reported and that repairs to only one had been accounted for by Mr. Schlie, and there had been no explanation by him as to the cause of the work not being done, although the engine was dispatched. This is a direct violation of Rules 36 and 104 of the Bureau of Locomotive Inspection, and also a

direct violation of Carrier's instruction of January 25, 1938, and very recent instructions on this matter of September 21 and 23, 1940, Carrier's Exhibits 12, 13 and 14.

5. Exhibit 22 shows copy of work report of engine 507 October 15, 1940. The check marks on this exhibit were made in red pencil by Federal Inspector Mr. Leahy. This shows a report regarding the plate under the draw bar pin between engine and tank being defective. Mr. Schlie made notation, as shown on the report, that the **draw bar pin** is perfectly safe for service. The Federal Inspector took exception, because the **draw bar pin** had not been reported; it was the supporting plate that was reported, and should this plate have dropped, the engine and tender would have parted and perhaps caused serious accident involving loss of life. This is again a violation of Rule 104 and 122 of the Laws, Rules, and Instructions by the Bureau of Locomotive Inspection, and again a violation of various previous and recent instructions given Mr. Schlie in regard to this work. In this connection, Assistant Master Mechanic Kauffman wrote Master Mechanic Daniel under date of October 15th, which is self-explanatory, and is shown as Carrier's Exhibit No. 23.

6. Exhibit 24 shows copy of work report of engine 550 of October 6, 1940. The check marks shown on the exhibit were placed on the work report in red pencil by the Federal Inspector. The work report is signed by Mr. Schlie, and the defect reported and not repaired had to do with the stoker firing plate. The Federal Inspector took exception to this engine being run with this defect without sufficient explanation as to the condition of the defective part. This is again a violation of the Laws, Rules, and Instruction of the Bureau of Locomotive Inspection, and the previous and very recent instructions to Mr. Schlie by the Carrier.

7. Exhibit 25 shows copy of work report of engine 578 of November 21, 1940, which is one day after the final instructions on this matter to Mr. Schlie of November 20th, 1940, Carrier's Exhibit No. 15. The check marks shown on the exhibit were placed there in red pencil by the Federal Inspector. This reports the booster cut out, and a notation placed on report in this regard by Mr. Schlie, which notation was considered inadequate by the Federal Inspector. This is again a violation of the various Laws, Rules, and Regulations of the Bureau of Locomotive Inspection, and the former instructions in this regard by the various officers of the company to Mr. Schlie, the latest of which had been issued to him the day previous.

8. Exhibit 26 shows copy of work report of engine 573 of December 2, 1940. The check mark shown was in red and placed there by Federal Inspector. This shows the booster cylinder cock won't close. The report was signed by Mr. Schlie. The work was not done, and there was no notation as to why it was not done. This is a direct violation of Rule 50 and 104, and this engine was leaving the house when found by Federal Inspector Leahy. This is also a violation of all the instructions issued by the various officers of the railroad company and requirements by the Bureau of Locomotive Inspection, and again precipitated utter lack of confidence of the Carrier's ability to comply with the Federal Inspector's wishes.

9. Exhibits 27 and 27A show copy of work reports of engine 572 December 2nd, 1940. This work report shows left front cylinder head cracked. It was reported repaired and the work report signed by Mr. Schlie. The Federal Inspector caught this engine departing from the Lafayette roundhouse and issued a Form 5 for this defect as shown by Exhibit No. 11. This resulted in tying the engine up to make repairs, which should have been properly made before, and is a direct violation of the Carrier's instructions and several Laws of the Bureau of Locomotive Inspection. This resulted in a letter to Master Mechanic by Assistant Master Mechanic Kauffman under date of December 4th, shown by Carrier's Exhibit No. 28, and eventually

resulted in a conclusion that severe action must be taken to correct the utter disregard of all laws and instructions by Mr. Schlie, and resulted in the investigation shown as an exhibit to this submission.

10. Exhibit 29 shows copy of work report of engine 578 of December 16, 1940. The check mark placed on this work report was placed there in red pencil by the Federal Inspector and shows that after all the instructions issued by the Carrier, even after the investigation of Mr. Schlie held in the Master Mechanic's office; Schlie, even then, persisted to fail to comply with Carrier instructions or wishes of the Federal Inspector, because he had not definitely explained on this work report to the satisfaction of the Federal Inspector why the repairs had not been made.

The Carrier wishes to herewith quote Rule 104, which is one of many of the Interstate Commerce Commission, Bureau of Locomotive Inspection Laws, Rules, and Instructions for inspection and testing of steam locomotives and tenders and their appurtenances. Also, for ready reference, rules 36, 43, 50, and 122 (a) are quoted as Carrier's exhibit No. 30.

"104. Each locomotive and tender shall be inspected after each trip, or day's work, and the defects found reported on an approved form to the proper representative of the company. This form shall show the name of the railroad, the initials and number of the locomotive, the place, date, and time of the inspection, the defects found, and the signature of the employe making the inspection. The report shall be approved by the foreman, with proper written explanation made thereon for defects reported which were not repaired before the locomotive is returned to service. The report shall then be filed in the office of the railroad company at the place where the inspection is made."

This rule simply means in part that the foreman must sign the work report form before the engine is again dispatched. He must also account for all of the work that has been reported on this form. Each failure to sign a work report or account for each individual repair job is a Federal defect that is charged to the locomotive involved. Failure to comply with these simple requirements in regard to this locomotive work report form is as much a violation of the law as to operate a locomotive with a serious Federal defect such as broken axle, or sharp flange on a tire, or a crack in the shell of the boiler. Compliance with this rule by Mr. Schlie **would have been so easy** that the Carrier is at a loss to understand why he willfully and negligently and repeatedly insisted on making flagrant violations of the rules, and of the instructions of the Carrier, and the wishes of the Federal Inspector. Under these circumstances the Carrier could no longer assume responsibility for Mr. Schlie as a foreman. If Schlie is reinstated as a foreman, the Carrier cannot assume responsibility for his violation of law and safety.

The Carrier has shown that Mr. Schlie was demoted for failure to obey instructions by the management, and for failure to comply with the Interstate Commerce Commission requirements, and that he flaunted the Federal Inspectors. The Carrier has cited convincing evidence, although many more cases could be. It has shown that Mr. Schlie's negligence had been called to his attention repeatedly without avail for several months previous to the investigation. It has shown that there was an investigation held, which did not violate the Agreement. Even if as contended by the employes it was not held in proper manner, the Supervisors failed to appeal in the regular order of procedure or within the time limit written into Rule 15.

The Carrier calls attention to the fourth paragraph of the employes' description of dispute, which charges discrimination. Under the circumstances, the Carrier would have been fully justified in **dismissing Mr. Schlie from the Carrier's service** immediately and without showing the leniency that enabled

him to be demoted instead of discharged. At no time did the Carrier suggest that Mr. Schlie be discharged from its service, and it always has been disposed to be lenient with him, although no leniency is due him. If this signifies intent to discriminate against Mr. Schlie, as the employes claim, the Carrier is at a loss to understand, and must await definite proof that Mr. Schlie was actually discriminated against as charged, and that such discrimination was due to his "activities in exercising his prerogative in assisting in collective bargaining." The Carrier submits:

1. The claim involved in the dispute is barred due to employes' failure to comply with Rule 15 of the Agreement.
2. The Carrier has not violated any of the Rules of the Agreement.
3. That Mr. Schlie's demotion was fully justified.
4. The Fourth Division should render an award in favor of the Carrier, denying the claim in full.

All matters referred to in support of the Carrier's position have been the subject of correspondence or discussion with the employes' committee, and its duly accredited representatives. The Carrier desires notice of hearing and an opportunity for oral presentation there at.

**OPINION OF BOARD:** This is a disciplinary case.

The carrier at the hearing before the Board, with Referee sitting moved to abate all proceedings before the Division in regard to this claim on the grounds that Claimant Schlie is an alien enemy and, therefore, has no rights during hostilities with Germany to prosecute such action. There is some doubt as to whether such a motion would lie before a board constituted such as is this Board. The machinery provided by the amended Railway Labor Act of June 21, 1934, and amendments of April 10, 1936, seems designed to extend the principle of employer-employee adjustment by parleys starting in the field, into a bipartisan board supposedly removed from the parties directly interested. This is not to say that the functions of the Board are not judicial in character in that the results of the deliberations are to arrive at the correct construction of a rule or its proper application, it would not seem that an alien enemy employee would be precluded from carrying on parleys for adjustment in the field. Consequently, he may not be precluded from the use of the employer-employee machinery set up by the government as a continuation of the process. However that may be, we think the claimant is otherwise precluded from prosecuting his claim before this Board. Consequently, we need not determine question raised by the motion to abate.

Rule 15 of the Agreement provides that an appeal from a decision unsatisfactory to the person investigated must appeal in writing within 30 days after the reviewing officer has rendered his decision.

Mr. R. W. Daniel, master mechanic, conducted the investigation on December 9, 1940. Mr. Salomon represented Schlie. On January 9, Daniel wrote Mr. Oakes, general foreman, to inform Schlie that effective January 16 he would be removed as supervisor with the right to exercise seniority in his craft. On January 10, 1940, Oakes notified Schlie by letter. On January 23, 1941, Schlie wrote Daniel asking him to reopen the case for further discussion and give him opportunity to answer the charges. On January 30, 1941, Daniel wrote Oakes to inform Schlie that he would not reopen the case and that "this case is closed as far as I am concerned," of which fact Oakes, on January 31, wrote Schlie, using Daniel's words. On March 31, 41 days later, Salomon, on behalf of Schlie, wrote the next highest official, W. M. English, Superintendent Motive Power, reciting that Schlie's request to Daniel to reopen the case had been declined and that "we are appealing to you for appointment to discuss the matter." Mr. English declined to discuss the case on the ground that the appeal had not been taken within 30 days. The claimant shows nothing which would have tolled or stayed the running of this period of limitation. It is doubtful if a conference held

within the thirty days or the promise of a conference would suspend the time. The rule is explicit. It was placed in the agreement so as to require prompt appeal and if none were made the carrier might assume that the matter was ended and no further action would be taken. There is nothing which prevents the employe from seeking conferences while the appeal is pending but he must not let the 30 days run without perfecting his appeal by written notice.

It is contended that there was no investigation as required by the rules because it is said there was no specific charge made. No objection to the nature of the charge or lack of specificness was made at the hearing nor any time thereafter. If the employe considers he did not have a fair hearing or the charge was not sufficiently definite to apprise him as to what he must meet or that there is a variance between the charge and the offense for which he was disciplined, his remedy is by appeal within time. The period for appeal is mandatory. We cannot relieve from a failure to appeal in time, especially when no valid excuse for the failure is given.

**FINDINGS:** The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The claim in this case was not properly processed on the property because appeal from the reviewing officer was not made within the period prescribed by the rules.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST: R. B. Parkhurst  
Secretary

Dated at Chicago, Ill., this 12th day of November, 1942.