

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America that—

Reprimand, DD-36094, Entry No. 35043-P, on the following described incident, be removed from the record of Yardmaster L. J. Boyer:

“Incident involving Train 92, May 12, 1953, Toledo Terminal.”

EMPLOYEES' STATEMENT OF FACTS: As a result of an investigation conducted by the Terminal Train Master at Toledo, Ohio, on May 14, 1953, transcript of which is attached as Exhibit “A” the following entry was made on the record of Yardmaster L. J. Boyer:

“5-12-53 Toledo, O. On this date 13 cars of perishable arriving at Toledo on Train 92, routed via the Pere Marquette, missed the Puller to that connection resulting in 24 hours delay in Toledo Terminal. Engine was coupled onto the 13 cars in Harris No. 1 Track instead of No. 2 Track and the error was not detected until after the Puller had departed. Yardmaster L. J. Boyer properly instructed the crew as to the manner in which this business was to be handled; however, after issuing instructions he failed to stay on the ground and to see that his instructions were complied with, which he should have done in view of the importance of this business. REPRIMANDED. DD-36094.”

Request for removal of this entry was progressed by the employes and denied by the highest officer designated by the Carrier to handle such matters.

POSITION OF EMPLOYES: Correspondence in connection with this case is quoted below in chronological order—

RAILROAD YARDMASTERS OF AMERICA

“Baltimore & Ohio Local Lodge No. 13

“June 18, 1953

691 Overlook Ave.,
Cincinnati 5, Ohio

Mr. A. W. Conley
Superintendent
Baltimore & Ohio Railroad
Dayton, Ohio

Dear Sir:

An investigation was conducted by W. G. Waggoner, Terminal Trainmaster at 9 A. M. May 12, 1953, relative to alleged failure of Yardmaster Lyle J. Boyer to handle perishable in train #92, May 12, 1953, resulting in Entry No. 35043-P placed on his record.

This hearing was conducted contrary to Yardmaster Agreement, Art. 7, page 5, which reads as follows: ‘This rule does not obligate the carrier to refuse permission to an individual employee to present his own grievance or, in hearing involving charges against him to present his own case personally. The effect of this rule, when an individual employee presents his own grievance or case personally is to require that the duly authorized committee, or its accredited representative, be permitted to be a **party to all conferences, hearings or negotiations** between the aggrieved or accused employee and the representatives of the carrier.’

The hearing was a direct violation of the rule to the extent that Local and Regional Chairman were not notified of the investigation. Further, I wish to call your attention to a recent letter issued by Mr. R. L. Harvey, Manager Labor Relations, Baltimore, Md., to all Superintendents which relates to Regional Chairman being notified of any investigation being conducted against yardmasters in his territory.

Mr. Harvey’s letter was ignored in this case, and I am requesting the removal of Entry No. 35043-P placed on Mr. L. J. Boyer’s record.

Yours truly,

/s/ Albert Healey
Regional Chairman
Railroad Yardmasters of America

AH:gh

cc: Mr. R. M. Semple

Mr. W. F. Mauntel

Mr. L. J. Boyer”

THE BALTIMORE AND OHIO RAILROAD COMPANY
Office of Superintendent
Dayton 2, Ohio

"Incident—Involving Train 92, May 12, 1953—Toledo Terminal.
(L. J. Boyer, Yardmaster).

Dayton—June 29, 1953.

DD-36094

Mr. Albert Healey,
Regional Chairman,
Railroad Yardmasters of America,
Cincinnati, Ohio

Dear Sir:

Referring to your letter June 18, 1953, regarding incident at Toledo Terminal involving the handling of perishable in Train 92, May 12, 1953, which resulted in Entry No. 35043-P being placed on the record of L. J. Boyer, Yardmaster.

I have reviewed the file in this case; also the requirements of the Yardmasters' Agreement, and have likewise analyzed your request for removal of the entry referred to above.

Possibly you have a copy of Yardmaster Boyer's statement given to Terminal Train Master Waggoner under date of May 14, 1953. I call your attention to the following questions and answers:

Q. Mr. Boyer, under date of May 13 the following notice was sent to you: 'You are hereby notified, in accordance with the rules of wage agreement under which you are working, to report at Terminal Trainmaster's office, at Toledo, Ohio at 9:00 A. M., on Thursday, May 14, for hearing on the following matter: 'To determine responsibility for failure to properly handle perishable in train 92, May 12, 1953.' If you desire the presence of any witnesses or representatives at this hearing, arrange to bring them with you.' Did you receive this notice?

A. Yes sir.

Q. Does it constitute proper notice under the rules of your agreement as to the nature of the investigation?

A. Yes sir.

Q. Do you desire the presence of any witnesses or representatives at this hearing?

A. No sir.

Q. Are you ready to proceed?

A. Yes sir.

* * * * *

Q. Mr. Boyer, have you been given full opportunity to question witnesses and others who gave testimony at this hearing?

A. Yes sir.

Q. Has this formal hearing been fair and impartial?

A. Yes sir.

Q. Has this formal hearing been conducted in accordance with the rules of agreement under which you are working?

A. Yes sir.

After giving this case due consideration, we cannot comply with your request in having this notation removed.

Very truly yours,

/s/ A. W. Conley
Superintendent."

* * * * *

RAILROAD YARDMASTERS OF AMERICA
Baltimore & Ohio RR Local Lodge No 13

"Niles, Ohio
July 16, 1953

Mr. T. C. Smith, General Manager
Baltimore and Ohio Railroad Company
Cincinnati, Ohio

Dear Sir:

I am appealing the following case of Yardmaster L. J. Boyer of Toledo, Ohio to you for your consideration and just handling. This case has been handled with Superintendent A. W. Conley of Dayton, Ohio.

The Railroad Yardmasters' of America's Committee requests that the reprimand dated May 26, 1953 at Dayton, Ohio against Yardmaster L. J. Boyer of Toledo, Ohio in regard to the handling of 13 cars of perishable freight on May 12, 1953 be removed for the following reason. On page 5 of the Railroad Yardmasters of America contract with the Baltimore and Ohio Railroad Under Article 7 reads as follows

Note: 'This rule does not obligate the carrier to refuse permission to an individual employee to present his own grievance or, in hearing involving charges against him, to present his own case personally. The effect of this rule, when an individual employee presents his own grievance or case personally, is to require that the duly authorized committee, or its accredited representative, be permitted to be a party to all conferences, hearings or negotiations between the aggrieved or accused employee and the representatives of the carrier.' This rule of the Yardmasters was not complied with and we the Committee have a distinct understanding with Mr. R. L. Harvey, Manager Labor Relations at Baltimore in that the Regional Chairman of the Railroad Yardmasters of America will be

notified in his territory of any hearings or investigations involving any of his yardmasters so he may attend same to protect the yardmasters and the contract which he represents.

Very truly yours,

/s/ Robert M. Semple
General Chairman.

Healey-Mauntel-Joyce"

* * * * *

THE BALTIMORE AND OHIO RAILROAD COMPANY

Western Region

Office of General Manager

Cincinnati 2, Ohio

T. C. Smith
General Manager

"August 13, 1953

Mr. Robert M. Semple,
General Chairman
Railroad Yardmasters of America,
Niles, Ohio

Dear Sir:

Referring to your letter July 16th, appealing the case of Yardmaster L. J. Boyer, Toledo, Ohio, requesting the removal of entry placed on his service record account his responsibility in connection with perishable arriving Toledo on Train 92, May 12, having missed connection with P. M. Fuller.

I have investigated this case thoroughly, and inasmuch as the entry in question on Mr. Boyer's record is fully supported by the investigation conducted, I regret that I cannot agree to its removal.

Very truly yours,

/s/ T. C. Smith"

* * * * *

RAILROAD YARDMASTERS of AMERICA

"Baltimore and Ohio RR Local Lodge No. 13

Niles, Ohio
August 21, 1953

Mr. R. L. Harvey
Manager Labor Relations
Baltimore and Ohio Railroad Company
Baltimore Md:

Dear Sir:

The following case of Yardmaster L. J. Boyer, Toledo, Ohio has been handled with Superintendent A. W. Conley of the Toledo Divi-

sion and General Manager T. C. Smith of the Western Region and is being appealed to you for your just and considerate handling.

The Railroad Yardmasters of America's Committee requests that the reprimand dated May 26, 1953 at Dayton, Ohio against Yardmaster L. J. Boyer in regard to the handling of 13 cars of perishable freight on May 12, 1953 be removed for the following reason.—The Baltimore and Ohio Railroad and the Railroad Yardmasters of America entered an agreement at Baltimore, Md as follows.

This is a copy of letter put out by Mr. R. L. Harvey in regard to this agreement.

(Copy)

The Baltimore and Ohio Railroad Company
Office of
Vice-President-Personnel

Baltimore, Md.

July 2, 1952

Messrs. W. D. Murphey	J. H. Bradford
J. D. Warfield	J. E. Maxwell
M. B. Van Pelt	H. I. Walton
C. T. Williams	A. S. Waller
T. J. Klauenberg	J. F. Robbert
J. J. Sell	A. H. Woerner
A. W. Colnot	A. W. Conley
H. D. Graffious	R. C. Diamond

In recent conference with the Yardmasters' Organization the Committee brought out that the note to Article 7 found on page 5 of the Agreement the Baltimore and Ohio Railroad Company and the Railroad Yardmasters of America, effective August 1, 1921, and last revised March 1, 1947, provides that: '* * * when an individual employee presents his own grievance or case personally * * * the duly authorized committee, or its accredited representative, be permitted to be a party to all conferences, hearings or negotiations between the aggrieved or accused employee and the representatives of the carrier.'

RAILROAD YARDMASTERS of AMERICA

(2) Case of Yardmaster-L. J. Boyer, Toledo, Ohio
Baltimore and Ohio RR Local Lodge No. 13

In order to effect compliance with this part of Article 7, I have agreed with the Yardmasters' Committee that in the future copies of all notices summoning yardmasters to report for investigations will be sent to the Regional Chairman concerned of the Yardmasters' Organization.

The Regional Chairman may then, at his discretion, be present at the investigation.

Unless properly requested in advance, no postponement of the investigation should be made if the Yardmasters' representatives

fail to appear. No payment for time lost will accrue to any yardmaster representative account of appearing at any investigation.

SIGNED—R. L. Harvey

Copy to: Mr. R. M. Semple, Acting General Chairman
Railroad Yardmasters of America 426 Brown Street, Niles, Ohio

Mr. P. K. Partee—for information
Mr. F. G. Hoskins
Mr. J. Edwards, Jr.
Mr. T. C. Smith
Mr. H. F. Wyatt—for information
Mr. W. R. Galloway, Jr.
Mr. T. J. O'Connell
Mr. C. E. Mager
Mr. J. E. Howell
Mr. M. E. Swein

The above letter requires that the Regional Chairman at all times in his own territory be notified by a copy of all notices summoning yardmasters to report for investigations. This was not done in this case as Regional Chairman A. Healey, 691 Overlook Ave., Cincinnati, Ohio did not receive a copy of this investigation in regard to Yardmaster L. J. Boyer, Toledo, Ohio and so of course was unable to attend the investigation.

Under the above rules and reasons the Railroad Yardmasters of America's Committee requests that this reprimand against Yardmaster L. J. Boyer, Toledo, Ohio be justly removed from his record.

Very truly yours,

/s/ Robert M. Semple

Robert M. Semple
General Chairman

Mauntel-Joyce-Healey"

* * * * *

THE BALTIMORE AND OHIO RAILROAD COMPANY

Office of Vice President

Personnel

Baltimore 1, Md.

R. L. Harvey
Manager Labor Relations

"September 29, 1953

Mr. R. M. Semple, General Chairman
Railroad Yardmasters of America
426 Brown Street, Niles, Ohio

Dear Sir:

Referring to our conference of September 23 when we discussed your request for removal of entry placed on the service record of Yardmaster L. J. Boyer for his responsibility for perishable connection from Train 92 missing connection with P. M. Puller, May 12, 1953.

In view of the fact that the entry in question merely cites the circumstances in this case and, further, that Yardmaster Boyer answered in the negative when asked if he desired the presence of any witnesses or representatives when hearing was held, I cannot concur in your request.

However, as stated to you in our conference, in order that all concerned will be aware of the requirement that the Regional Chair-

man concerned of the Yardmasters' Organization be informed with respect to notices summoning yardmasters to report for investigation, we are arranging to direct their attention to our letter of July 2, 1952 regarding the note to Article 7, Page 5, of the Agreement, effective August 1, 1921, between the Baltimore and Ohio Railroad Company and the Railroad Yardmasters of America.

Very truly yours,

/s/ R. L. Harvey"

* * * * *

An appraisal of the record in this case reveals two distinct conditions upon which the employes justify their request in this dispute.

1. The investigation itself did not establish negligence on the part of Yardmaster Boyer.

2. The rules of the agreement and the specific understanding with the manager of labor relations were not complied with.

With respect to Item 1 above referred to, the transcript of the investigation speaks for itself and the very wording of the service record entry indicates lack of decisiveness on the part of the carrier in phrasing the entry.

With respect to Item 2 the rule and understanding are clear and unambiguous and need no further comment except to stress the fact that both the superintendent and the general manager evaded making any reference to this phase of the dispute in defense of the superintendent's action and the manager of labor relations said in effect that he would issue instructions that the understanding be observed from now on.

As definite proof that the action of Management in taking disciplinary action against Yardmaster Boyer was capricious, unwarranted and in abuse of managerial discretion, we direct attention to the fact that the only other discipline meted out was a reprimand to the Yard Foreman who was alone responsible for the failure of the cars to move as per schedule.

All data used in support of this claim has been presented to the carrier.

The claim should be allowed.

CARRIER'S STATEMENT OF FACTS: On May 12, 1953, the claimant herein, L. J. Boyer was working as Yardmaster in the Toledo Terminal.

On that date thirteen cars of perishable freight were scheduled to be moved on Train No. 92 from Toledo Terminal to the Pere Marquette Yard. The claimant issued instructions to the yard crew assembling Train No. 92 to pick up the thirteen cars of perishable freight off Harris No. 2 track. These instructions were issued to the Yard Foreman and the Head Brakeman.

In making the pickup in Harris Yard the Head Brakeman coupled onto thirteen cars in Harris No. 1 track (instead of in Harris No. 2 track as instructed). As a result of this mishandling by the yard crew, these thirteen cars of perishable freight were delayed for twenty-four hour period as they could not be moved until the following day.

As a result of this incident investigation was held in the Terminal Trainmaster's office at Toledo on Thursday, May 14, 1953, to determine responsibility for the improper handling of the cars. After the conclusion of the investigation the following notation was placed on the claimant's service record:

"5-12-53—Toledo, O.—On this date 13 cars of perishable arriving at Toledo on Train 92, routed via the Pere Marquette, missed the

Puller to that connection resulting in 24 hours delay in Toledo Terminal. Engine was coupled onto the 13 cars in Harris No. 1 Track instead of No. 2 Track and the error was not detected until after the Puller had departed. Yardmaster L. J. Boyer properly instructed the crew as to the manner in which this business was to be handled; however, after issuing instructions he failed to stay on the ground and to see that his instructions were complied with, which he should have done in view of the importance of this business. REPRIMANDED."

CARRIER'S ARGUMENT: The case is now progressed to this Division in the form of a request that the above cited notation be removed from the claimant's service record. The Carrier submits that this request cannot be supported by any rule in the current Yardmasters' Working Agreement.

I. The factual record examined.

The factual record in the instant case is relatively clear. While working on his assignment as yardmaster the claimant instructed a yard crew to couple onto thirteen cars of perishable freight which were standing on Harris No. 2 track in Toledo Terminal. It is apparent from the transcript of the investigation which is attached hereto as Carrier's Exhibit "A" that the yard foreman did not accompany the engine into the Harris Yard. The Head Brakeman who had been in the service for only about one month at the time of the occurrence of this incident, coupled onto thirteen cars standing on Harris No. 1 track instead of the thirteen cars of perishable freight standing on Harris No. 2 track as instructed.

It will be noted from Carrier's Exhibit "A" that the claimant in the instant case did not supervise the picking up of the thirteen cars of perishable freight. During the course of investigation he was questioned as follows:

"Other than to give instructions to Yard Foreman Whitner and Flagman Nichols did you supervise the work?"

To this question he responded:

"No sir. After they started up over the Scale I went back to the office."

Carrier's Exhibit "A" discloses that Yard Foreman Whitner referred to in the above quoted question did not accompany the engine in making the movement when the thirteen cars were picked up. That Exhibit further discloses that Flagman Nichols actually coupled onto the thirteen cars. It will be further noted from Carrier's Exhibit "A" that Flagman Nichols had entered the Company's service in April, 1953, approximately one month prior to the occurrence of this incident.

During the course of the investigation the claimant attempted to minimize his responsibility in this matter. This is stated in Carrier's Exhibit "A" as follows:

"Q.—Explain why you feel you have no responsibility for the error that occurred resulting in cars being left in Rossford Yard.

A.—Because I think the crew was properly lined up in view of the fact that Mr. Whitner is an experienced switchman, after instructions were given to him I did not think it necessary to follow it through any further."

It is clear from this testimony that the claimant made no effort to follow up the instructions he had issued.

In this connection the Carrier desires to point out that under the operating rules the claimant acting as a yardmaster is responsible to supervise

work subject to his direction. It is quite clear from the factual record here that this was not done in the case of Head Brakeman Nichols when he coupled onto thirteen cars standing on Harris No. 1 track rather than the thirteen cars standing on Harris No. 2 track as per instructions.

As a Yardmaster, the claimant has the further responsibility of making up freight trains with proper tonnage, and arranging to have trains properly classified, checked and inspected before leaving time. This supervisory function, the Carrier submits, was not fully performed by the claimant in the instant case resulting in the incident now under consideration.

Carrier's Exhibit "A" discloses that the claimant in the instant case truly realized his responsibility in connection with the dispatchment of these cars. During the course of the investigation the following questions and answers were made:

"Q.—Do you understand that as yardmaster it is your duty to see that this work is performed so there is no error in dispatching cars?"

A.—To a certain extent, but not to the extent that I have to follow crews up into each track to see what they do."

"Q.—As I understand your answer, you feel that your responsibility ends when the crew is lined up on the work they are to do. Is this correct?"

A.—No sir."

"Q.—Then you do realize it is your responsibility to see that the crews properly follow your instructions?"

A.—Yes sir."

Thus the claimant frankly admits that he had the responsibility to see that this crew followed his instructions. The Carrier submits that if the instructions had been satisfactorily supervised, this incident would not have occurred; yet the claimant simply omitted to act at all.

In view of all that is contained hereinabove the Carrier submits that the factual record establishes the claimant's responsibility in this affair.

II—The applicable rule of the working agreement examined.

Article 7 of the current Yardmasters' Agreement is entitled "Discipline" and reads in full as follows:

"(a) Yardmasters shall not be disciplined or dismissed without a hearing before a proper officer. At a reasonable time prior to the investigation such employee shall be apprised in writing of the precise charge against him and shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be represented by the duly authorized representative. He may, however, be held out of service pending such investigation.

Stenographic report will be taken of all hearings or investigations and the employee involved and the duly authorized committee shall each be furnished with one copy.

"(b) The investigation shall be held by a proper officer within ten (10) days from date when charged with the offense or held from service. A decision shall be rendered within twenty (20) days after completion of investigation.

“(c) An employee dissatisfied with the decision shall have the right to appeal to the next higher officer designated, provided it is made within thirty (30) days from the date of decision, and conference on the appeal shall be arranged within thirty (30) days from such date of appeal and decision promptly rendered.

“(d) If a further appeal is taken from the decision of the highest officer designated to handle such matters, it will be handled as prescribed in the Railway Labor Act, as amended.

“(e) If the final decision decrees that the charge or charges against the employee are not sustained, the record shall be cleared of same and the employee reinstated and compensated for the difference between the amount he would have earned in service and any amount he earned from outside employment during the period he was out of service.

“(f) At the hearing or on the appeal the employee may be assisted by one or more duly accredited representatives.

“(g) The time limits of this Article may be extended by mutual agreement.

Note: This rule does not obligate the carrier to refuse permission to an individual employee to present his own grievance or, in hearing involving charges against him, to present his own case personally. The effect of this rule, when an individual employee presents his own grievance or case personally, is to require that the duly authorized committee, or its accredited representative, be permitted to be a party to all conferences, hearings or negotiations between the aggrieved or accused employee and the representatives of the carrier.”

All requirements of this rule were met in the investigation held in the Terminal Trainmaster's office on May 14, 1953. The Carrier submits that there can be no question but that the investigation conducted was fair and impartial.

A review of Carrier's Exhibit "A" will disclose that the notice of the investigation sent to the claimant was entirely sufficient to apprise the claimant of the charges against him. That notice read as follows:

“You are hereby notified, in accordance with the rules of wage agreement under which you are working, to report at Terminal Trainmaster's office, at Toledo, Ohio at 9:00 A.M. on Thursday, May 14, for hearing on the following matter: To determine responsibility for failure to properly handle perishable in train 92, May 12, 1953. If you desire the presence of any witnesses or representatives at this hearing, arrange to bring them with you.”

During the course of the interrogation the claimant responded in the affirmative when asked if he considered the notice proper as to the nature of the investigation under the rules of the Working Agreement.

Carrier's Exhibit "A" further discloses that claimant did not desire the presence of any witnesses or representatives at the hearing. In this connection he was questioned:

“Do you desire the presence of any witnesses or representatives at this hearing?”

He answered:

“No sir.”

He was asked:

“Are you ready to proceed?”

He answered:

“Yes sir.”

At the conclusion of Mr. Boyer's testimony he was asked:

“Mr. Boyer have you been given full opportunity to question witnesses and others who gave testimony at this hearing?”

He answered:

“Yes sir.”

He was questioned:

“Has this formal hearing been fair and impartial?”

He answered:

“Yes sir.”

He was questioned:

“Has this formal hearing been conducted in accordance with the rules of agreement under which you are working?”

He answered:

“Yes, sir.”

The above cited testimony of the claimant conclusively establishes the fairness and impartiality of the hearing held on May 14, 1953. The Carrier submits that the conduct of that investigation is not now subject to attack.

In view of all that is contained hereinabove the Carrier submits that the claimant herein was afforded a fair and impartial hearing in accordance with the requirements of the current Yardmaster's Working Agreement.

III—Applicable Awards Examined.

The Carrier calls the attention of this Division to the notation placed on the claimant's service record previously cited herein. It will be noted that this service record notation is merely a concise recitation of the facts relating to the incident.

In this connection the Carrier desires to refer this Division to Award No. 4713 of the First Division. In denying the claim in that Award the First Division with the assistance of Referee Swacker held in pertinent part as follows:

“The entry against the petitioner's record is only the actual facts of what occurred and the Division does not consider it has any right to require the removal of such entry.”

The Carrier submits that such a holding has great force in the instant case.

Consistently, this Division has refused to set aside the disciplinary action taken by the Carrier if the record discloses that the discipline was not arbitrary, capricious or excessive after full hearing on the property. This principle

remains intact unless the record discloses that the discipline was arbitrary, capricious or excessive, and the complainants have the burden of so showing. The Carrier submits that none of these elements are existent in the record of the instant case. Awards of this Division applying this principle are as follows:

In Award No. 326 this Division without referee rendered a denial award on the following basis:

"The Division finds no cause for disturbing the disciplinary action of the Carrier made subject to dispute in this docket."

In Award No. 401 the Division with Referee Leverett Edwards held in part as follows:

"The decision of Carrier herein does not appear to have been arrived at arbitrarily, capriciously or for motives of prejudice. It may be granted that the evidence is conflicting in certain features, but we do not believe the record is such as would now permit this Board to substitute its judgment for that arrived at by Carrier after full hearing on the property."

Reiterating this same principle this Division with the assistance of Referee I. L. Sharfman denied the claim in Award No. 472 on the following basis:

"The evidence of record does not disclose adequate grounds for disturbing the disciplinary action of the Management."

The principles enunciated in these awards, the Carrier submits, do not support Mr. Boyer's claim and request.

In view of all that is contained hereinabove, the Carrier submits that both the claim and request herein are entirely without merit and respectfully requests this Division to deny them accordingly.

Oral hearing is requested.

(Exhibits are not reproduced.)

OPINION OF BOARD: Thirteen cars of perishables were delayed 24 hours because an inexperienced yard helper made his grab in the wrong track. His immediate superior was an experienced yard foreman who had been "properly instructed" by the claimant yardmaster.

At the investigation the yard foreman was represented by the BRT. The yardmaster declined representation. The result was a disciplinary reprimand for the yardmaster whose organization now asks that the reprimand be removed and argues that the investigation failed to establish the claimant's negligence; and, secondly, that the investigation itself did not comply with the governing rule and interpretation, the pertinent portions of which read as follows:

"ARTICLE 7

DISCIPLINE

* * * * *

"Note: This rule does not obligate the carrier to refuse permission to an individual employee to present his own grievance or, in hearing involving charges against him, to present his own case personally. The effect of this rule, when an individual employee presents his own grievance or case personally, is to require that the duly

authorized committee, or its accredited representative, be permitted to be a party to all conferences, hearings or negotiations between the aggrieved or accused employee and the representatives of the carrier."

and from R. L. Harvey letter dated July 2, 1952:

"In order to effect compliance with this part of Article 7, I have agreed with the Yardmasters' Committee that in the future copies of all notices summoning yardmasters to report for investigations will be sent to the Regional Chairman concerned of the Yardmasters' Organization."

The rule and the letter of understanding together fix the procedure to be followed in investigations involving yardmasters.

The failure to notify the regional chairman leaves the yardmaster organization outside the investigation and contravenes the rule. While it is true that the individual yardmaster may decline to have a representative present in his behalf, he cannot deny his organization its right to be notified. The rule itself is not mandatory but the conclusion reached after conference negotiations, as spelled out by the letter of R. L. Harvey, has compelling effect in instances such as the one presented here.

Accordingly we hold that the failure to notify the yardmaster organization makes the investigative action a nullity, which this Board should set aside.

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

The carrier and the employe 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.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Illinois, this 4th day of June, 1954.