

**Award No. 1742**

**Docket No. 1737**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FOURTH DIVISION**

The Fourth Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

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**PARTIES TO DISPUTE:**

**THE AMERICAN RAILWAY SUPERVISORS ASSOCIATION**

**THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** It is the claim and request of the petitioning organization that—

1. The Respondent Carrier violated the Agreement by their unfair, unjust and discriminatory reprimand of Foreman D. H. Porter following an investigation held March 24, 1961.

2. The investigation held March 24, 1961 shall be declared unfair, discriminatory and unjust, the Carrier's decision shall be reversed, and Mr. D. H. Porter's record shall be cleared of the reprimand.

**OPINION OF BOARD:** This claim is predicated on Petitioner's contention that Claimant, an employe of 37 years service, including 24 as a foreman, was unjustly reprimanded for alleged absence without leave.

Before this disciplinary action was taken, Claimant received a hearing under Rule 17 of the Agreement. Thereafter, on March 30, 1961, the Chief Engineer issued his decision that Claimant was being given a reprimand. The latter appealed the Chief Engineer's decision, one of the appellate steps being the Chief Engineer again. On May 19, 1961, the Chief Engineer sustained the decision of March 30, 1961, when the appeal arrived at his level.

These circumstances satisfy us that Claimant has been deprived of a substantial right, his full right of appeal. The Chief Engineer had already judged the case and could not give it the independent and unbiased consideration contemplated by sound appellate machinery. We consider this defect sufficiently material, serious and prejudicial under the facts of this case to persuade us to sustain the claim. At the very minimum, an employe in Claimant's position attending a meeting on the property with his immediate supervisor's superior under the circumstances here present should have received his full right to have both guilt and penalty considered in an independent manner at each level of appeal. We do not consider this to be an onerous or unreasonable requirement. Unless it is observed, Rule 17 (c) and (g) are meaningless.

See Third Division Awards 7021 and 8431.

**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.

The Agreement was violated.

**AWARD**

Claim sustained.

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

**ATTEST: Patrick V. Pope  
Secretary**

Dated at Chicago, Illinois, this 30th day of January, 1963.