

Award No. 1951

Docket No. 1908

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.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE BALTIMORE AND ANNAPOLIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Charles F. Lips for one day's pay on December 5th, 1961 and all subsequent dates (Based on average hours paid per month for the first eleven months of 1961). In addition all accrued vacation pay for service performed for the employer in 1961. Also reinstatement to service with seniority unimpaired.

OPINION OF BOARD: Claimant, a bus driver in Carrier's service, was dismissed on the ground that he had mishandled transportation on specified days in October 1961.

At the hearing held prior to Claimant's dismissal, Carrier's hearing officer read the reports of unnamed investigators in support of the charges against Claimant. No other evidence was introduced against Claimant and none of the complaining witnesses were present, although Claimant requested the opportunity to examine them. This in itself constitutes a violation of the applicable Agreement since Article 17 thereof unambiguously and without limitation stipulates that "All persons whose testimony is to be used (unless his presence is waived by the accused employe) must be present at the investigation but witnesses may be examined separately, and in the event of conflicting testimony those whose evidence conflict will be brought together."

While it is not necessary that these hearings in discipline cases observe technical rules of procedure or evidence, it is essential that they comply with elementary principles of fair play. This means, among other things, that the hearing officer will conduct proceedings in an impartial manner and betray no predisposition against the accused employe and render no judgment as to guilt until the hearing has been completed and the evidence analyzed. The record in the present case shows that this elementary principle was ignored by Carrier's hearing officer. Any doubt regarding that point is dispelled by his following statement made well before the hearing had ended:

"I've got a lot of facts before me, it's very plain to see. I think when you are as patient as I have been with this man ever since January and February he has been one of the outstanding men out of the vast number we've got — he has been one of the few who time after time has had something that looked a little unusual about the way his fares have been rung up, and I sat and watched and waited * * * * * I have a very complete case."

It is perfectly evident from the foregoing that Claimant was not accorded the fair and impartial hearing contemplated by the applicable Agreement and the awards of this Board.

The claim will be sustained.

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 19th day of November 1964.