

NATIONAL RAILROAD ADJUSTMENT BOARD**FOURTH DIVISION**

Referee Jacob Seidenberg

PARTIES TO DISPUTE:**RAILROAD YARDMASTERS OF AMERICA****LEHIGH VALLEY RAILROAD COMPANY**

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

Twenty (20) demerit marks be removed from the personal record of Yardmaster R. J. Culver. Discipline assessed account alleged responsibility for delay to Car TTX 102159, dispatched August 10, 1965, from Coxtton Yard.

OPINION OF BOARD: The discipline assessed against the claimant Yardmaster in disciplinary proceedings grows out of the alleged derelictions of the Claimant's failure to move promptly a piggyback shipment, TOFC Shipment TTX 102159, which arrived in the terminal on August 6, 1965 at 11:45 P. M., but did not leave until August 10, 1965 at 9:10 P. M. This piggyback car was a rush shipment which had to be weighed and moved out by the next first available train.

The record contains the Carrier's reasons, and the Organization's defenses and explanations, as to why discipline should be sustained or why it should not, including excerpts from a transcript of the investigative hearing. Both parties make frequent allusions and references to this transcript in support and in defense of their respective positions, but the transcript is not attached to, or made a part of, the Carrier's Submission.

In light of the established principle that the Carrier has the burden of going forward with the proof in disciplinary actions, the Board has no alternative but to hold that the Carrier has not met its burden of going forward to prove that its disciplinary actions were supported by substantial competent evidence. While it may well be, that by the adducing of proper proof the Carrier's actions might have been justified, nevertheless, this Board is unable to make such a determination in the absence of competent proof. Since the entire transcript, and not parts thereof, provides the matrix of a discipline case, in its absence, the Board must find that the assessed discipline must fall. See First Division Awards Nos. 5555, 11364, 12140, 16955 and 20426.

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 parties to said dispute waived right of appearance at hearing thereon.

AWARD

Claim sustained.

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

**ATTEST: Muriel L. Humfreville
Secretary**

Dated at Chicago, Illinois, this 13th day of July, 1967.

PA

mas

tho:

whc

car:
Jun

inv