

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Form 1
CORRECTED

Award No. 24296
Docket No. 44004
94-1-93-1-C-4595

The First Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
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(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"The Brotherhood of Locomotive Engineers, C&NW General Committee of Adjustment requests this Division reinstate Brakeman R.E. McKinney, Chicago Terminal, to service with full compensation for all time lost and all seniority and vacation rights intact and removal from the C&NW Discipline System.

Claimant was dismissed from the service of the C&NW by General Manager/Operations J.E. Biebel under C&NW Discipline Notice No. 2214 dated September 8, 1992. Claimant was dismissed following investigation of September 3, 1992 on the following charge:

'Your responsibility for your failure to properly perform your duties when you failed to properly secure Track 25 in Yard 5 resulting in a rollout, approximately 1930 hours on August 24, 1992, while you were employed as Trainman, Job 30 on duty at 1530 hours, Proviso on August 24, 1992.'

FINDINGS:

The First 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.

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

In this case, the Carrier determined that the Claimant had not inspected his train to ensure that a sufficient number of brakes had been applied. Because of his failure to properly secure the rail cars when two additional cars were humped into the track, a rollout of the train occurred.

As a threshold matter, the Organization contends that the Claimant was not afforded a fair and impartial hearing. It argues that the language of the notice of the charge, the manner in which the hearing was conducted and the failure of the Carrier to have the other crew members testify, all show that the Claimant was prejudged.

With respect to the language of the notice of charges, it is nothing more than a statement of the charge that the Claimant was to answer. The failure to use the word "alleged" or other similar terms does not, in itself, establish reversible bias or prejudgment, as held by numerous Awards of this Board.

With respect to the hearing itself, the Organization's fundamental position is that the Claimant was prejudged. It so asserts because the Carrier did not charge other crew members, namely the Conductor and Engineer. Perhaps most importantly, the Carrier did not have these two crew members testify at the hearing.

The notion of a fair hearing requires that the Carrier summon to the hearing all witnesses which reason and logic dictate may have some relevant and material testimony or evidence to present. The primary purpose of a hearing for which the Carrier has the burden of conducting fairly, is to develop the facts and circumstances with respect to the issues that are raised by the charge, including those facts which favor as well as those which are adverse to the Claimant.

In this case, there were two other employees whom may have been in a position to offer relevant testimony. Ironically, the Hearing Officer questioned the Claimant about his interaction with these two employees, but elected not to call them to testify. It is clear that they may have had some relevant knowledge of what occurred shortly before the rollout. For example, did the Conductor apply hand brakes on Job 30? Did another Brakeman apply hand brakes? What was the Conductor's role prior to the incident under investigation? What did he and the Claimant discuss? Did the Claimant call the Engineer? While the Board has no way of determining whether these other employees would have contributed material evidence, the particular circumstances of this case lead us to find that the Claimant was not afforded a full, fair and impartial hearing.

For the foregoing reasons, we find that the claim must be sustained. The Claimant is to be returned to duty with seniority and other rights unimpaired and he is to be paid for all lost time, less a deduction for any outside earnings during the period that he was out of service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of April 1994.