

**Award No. 621**

**Docket No. 593**

**2-B&M-MA-'41**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**BOSTON AND MAINE RAILROAD**

**DISPUTE: CLAIM OF EMPLOYEES:** That the discipline assigned against the record of Machinist John E. O'Brien on Notice 1910 should be removed.

That the carrier is without right to discipline an employe for equipment failure, unless responsibility is placed upon the employe by conclusive proof.

That any system of discipline which was not negotiated by the parties to this dispute, cannot be used to affect the status of any employe covered by the agreement between System Federation No. 18 and the Boston and Maine Railroad Company.

**JOINT STATEMENT OF FACTS:** There is an agreement in effect between System Federation No. 18, Railway Employees' Department, A. F. of L. and the Boston and Maine Railroad. The effective date of that agreement is April 1, 1937.

Rule 31 of said agreement reads as follows:—

**Discipline**

No employee shall be disciplined or discharged without a fair hearing by a designated officer of the Carrier. Suspension in proper cases, pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time, prior to the hearing, such employee will be apprised of the precise charge against him and be given reasonable opportunity to secure the presence of necessary witnesses and representatives of his own choosing.

If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal, less any earnings from other employment.

Discipline cases will be handled on appeal the same as outlined in Rule 29 of this agreement.

If stenographic report of investigation is taken, the employee or his chosen representative will be furnished with a copy.

Dec. 28, 1938—For improper inspection of grease, locomotive No. 3714 causing delay to train No. 63.

Nov. 29, 1939—Performed work on locomotive No. 3718 in an improper manner before departure of train No. 63 resulting in delay on account of Left No. 3 driver hot.

Employees are not disciplined unless the conditions and circumstances warrant. Furthermore, no employe in the mechanical department is disciplined without first complying with the submitted instructions issued by general superintendent of motive power under date of January 25, 1939, which the carrier submits as Exhibit B.

In conclusion, the carrier contends there has been no violation of schedule rules, therefore, the discipline imposed in this case was entirely proper.

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

The carrier or carriers and the employe or employees 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 of said dispute were given due notice of hearing thereon.

It is unnecessary to resolve whether the disciplinary system inaugurated by the carrier is permissible in view of Rule 31 of the agreement, since the carrier has failed to establish that O'Brien was in default. The evidence relied upon to establish that O'Brien was negligent in the performance of his duties is so tenuous that it rests more upon speculation than on fact. The record does not justify holding O'Brien responsible and it would be unfair to permit a penalty in any form to be imposed upon him.

#### AWARD

Any discipline or penalty assigned against O'Brien shall be stricken.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1941.