

**Award No. 5184**  
**Docket No. 4964**  
**2-NYNH&H-FO-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Firemen and Oilers)**

**THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

That on July 31, 1964, at 10:30 A.M., Laborer Theodore Rosenberg was taken out of service, without proper hearing, due to the fact that he was not wearing safety glasses. Mr. Rosenberg was unjustly dealt with by being removed from the service without a proper hearing at per Rules 17 and 19 of the current agreement;

That Mr. Theodore Rosenberg be credited with six hours pay for July 31, 1964, and four hours pay for August 3, 1964.

**EMPLOYEES' STATEMENT OF FACTS:** Laborer Theodore Rosenberg, hereinafter referred to as the claimant, was employed in the Mechanical Department of the Maintenance of Equipment Shop in New Haven, Connecticut, by the New York, New Haven & Hartford Railroad Co., hereinafter referred to as the Carrier. The claimant's work week was Monday through Friday, with Saturday and Sunday off. His hours of service were from 8 A.M. to 4 P.M.

Under date of July 31, 1964, at 10 A.M., the claimant was approached by Shop Superintendent J. A. Croke when he (the claimant) was walking away from the coffee machine, at which time Mr. Croke advised the claimant he was to report to the office for failure to wear safety glasses. Mr. Croke advised the claimant of the new safety policy in practice at the Shop of wearing safety glasses, and advised the claimant he would be out of service at that time until a hearing was held.

The Committee was never notified of such action by Mr. Croke. The claimant was notified that a hearing would be held on Monday, August 3, 1964, regarding his failure to wear safety glasses. The Committee never received a copy of the charge or date of the hearing. A hearing was held on August 3, 1964, of which stenographic record was made, but the Committee never received a copy of such stenographic record.

**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 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.

An unusual situation is disclosed by the record as to this claim in which the Employees allege that Laborer Theodore Rosenberg, the Claimant, was taken out of service without proper hearing in violation of Rules 17 and 19 of the Agreement between parties and that he should be credited with six hours pay for July 31, 1964 and four hours pay for August 3, 1964.

On the morning of July 31st, it seems that Claimant was told by Shop Superintendent J. A. Croke "to report to the office for failure to wear safety glasses" and he was also then advised that he would be out of service from then until a hearing was held.

Apparently, a hearing was held on Monday, August 3, 1964, and upon termination thereof Claimant was permitted to return to duty and did so at 11:00 A.M. But from the record we are confronted with the undisputed fact that the duly authorized Committee of the Organization was not apprised of the precise charge against Claimant before the hearing nor was it furnished a copy of stenographic report of the investigation.

We must hold, therefore, that these omissions constituted material violations of the Agreement of the parties and that as a consequence Employees' claim should be sustained. However, there appears to be an unresolved variance in the facts as alleged by the respective parties. In their claim, the Employees aver that Claimant was taken out of service "at 10:30 A.M." during his shift of 8 A.M. - 4 P.M. on July 31, 1964, although Carrier's submission states this occurred "at 10:00 A.M." Both parties agree that Claimant was restored to service at 11:00 A.M. on his next assigned work day. So, as is sometimes said, "give or take" as to the half-hour just discussed, still the claim could involve only 8½ or 9 hours — not 10 hours as the Employees' claim totals. No doubt the parties can come to an agreement as to the proper amount of time actually involved.

#### AWARD

Subject to adjustment suggested, Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.

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