

**J. W. GOHMANN**

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'  
{ Department, A. F. of L. - C. I. O.  
{ (Electrical Workers)  
{ Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement, Electronic Technician, formerly Communications Maintainer N. P., Eugene W. Glatt of Pasco, Washington, was unjustly suspended from service of the Burlington Northern Inc. from December 27, 1976 through January 9, 1977, a period of 14 days.
2. That, accordingly, the Carrier be ordered to compensate Electronic Technician Glatt for the 12 working days at pro rata rate, the record of suspension be removed from his personal record, together with restoration of any lost vacation time, railroad retirement benefits, holidays, sick day or hospitalization benefits and any other rights, privileges or benefits he may be entitled to under schedules, rules, agreements, or law.

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.

Claimant was suspended from the service of the Carrier for fourteen (14) days after having been found to have failed to operate his motor vehicle in a safe manner which resulted in his being struck by a train. He was found to have failed to comply with Safety Rules of Maintenance of Way Department Rules 471, 473 and 475.

The Organization maintains that in addition to failing to meet its burden of proof, the Carrier evidenced a prejudicial attitude toward the Claimant in the wording of the notice, and the conduct of the hearing. The notice is attacked as showing prejudice in that the wording of the charge did not include the word "alleged". The notice advised Claimant that he

was to attend the investigation for the "purpose of ascertaining your responsibility for your failure to avoid having your assigned truck # 4659 struck..." We find this notice to be proper and not evidencing prejudice toward the claimant as alleged.

The rest of the Organization's allegations with respect to the improper conduct of the hearing have been reviewed. We do not agree with the Organization that the hearing was conducted in a prejudicial manner. The matters complained of were minor in nature and do not constitute sufficient error in the proceedings so as to render them a nullity.

The finding of the hearing officers that the Claimant was guilty of the offense charged was supported by substantive evidence of probative value. Considering the seriousness of the violation, in that it could easily lead to loss of life, we do not find the fourteen (14) day suspension to be excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of May, 1979.