Award No. 2996

Docket No. SG-3000

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that Signal Maintainer Volney C. Cottle be reinstated, returned to the position of signalman (interlocking repairman) at Topeka, Kansas, and paid for all wage loss subsequent to July 13, 1944.

OPINION OF BOARD: The Petitioner advances several reasons why this claim should be sustained. We shall limit our consideration to only one of these, which we deem to be of controlling importance, and shall express no opinion as to the others.

The Claimant, Cottle, was charged with responsibility for a motor car operated by him being struck and damaged by a cut of cars pushed by a switch engine in the Carrier's yards at Topeka, Kansas. The charge was preferred by the Carrier's Assistant Signal Supervisor who was the Clainmant's immediate superior. At the hearing, the Claimant was questioned by the Carrier's Signal Supervisor who presided at the inquiry and who subsequently rendered the decision. When the Signal Supervisor had finished with his questions, the Claimant's representative asked the privilege of interrogating the Assistant Supervisor, who was also present. To this request the Signal Supervisor replied:

> "You may question the witness (Claimant)) but you cannot question the (assistant signal) supervisor in this hearing."

Thereafter, the Signal Supervisor endeavored to commit the Claimant to a statement to the effect that the hearing had been conducted in a fair and impartial manner and in accordance with the Agreement. On the advice of his representative, the Claimant properly refused to so state, and this concluded the hearing.

Here, again, we have a situation where the Carrier's representative, occupying the dual role of prosecutor and judge, denied the Claimant the privilege of questioning the man who preferred the charges and who was personally present at the hearing. We cannot too emphatically condemn such practice. Hearings of this character should be full and free and as far above suspicion as the circumstances will permit. For its dereliction of duty in that respect the Carrier has deprived itself of the opportunity of having this case reviewed on its merits.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not accord the Claimant a fair and impartial hearing.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 29th day of November, 1945.