

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway Company, that:

1. The Carrier acted improperly when it charged V. C. Martell's record with fifteen (15) demerits for his alleged responsibility in connection with the improper movement of train Extra 1611 South from Norfolk to Fentress, Virginia, September 1, 1961.

2. Carrier shall now be required to:

(a) Clear Mr. Martell's record of the charge, and;

(b) Shall compensate him for one day's time lost from his assignment plus \$6.00 (six dollars) expenses incurred on October 2, 1961, when he was required by the Railway Company to appear at investigation held in Raleigh, N. C., in accordance with Article 14 of the Telegraphers' Agreement.

OPINION OF BOARD: On September 27, 1961, Claimant was served with the following notice:

"Please attend a formal investigation to be conducted in the Board Room of the General Office Building, Raleigh, at 1:00 p.m., Monday, October 2, 1961, to ascertain the cause and determine your responsibility, if any, for Extra 1611 South leaving Carolina Yard September 1, 1961 before the arrival of overdue train No. 98 without authorization by train order to do so.

"You are privileged to bring witnesses and representation in your behalf, but you must make your own arrangements in this respect."

Thereafter the claim shown herein was filed and progressed on the property and duly appealed to this Board.

The burden of proof in a discipline case is upon the Carrier, First Division Award 20471. Said award states:

"It is firmly settled in the law of labor relations that, in discipline cases, the burden of proof squarely rests upon the employer convincingly to demonstrate that an employe is guilty of the offense upon which his disciplinary penalty is based. Mere suspicion is insufficient to take the place of such proof. This principle is so well established and so universally accepted in the industrial relations world as to require no detailed discussion."

Careful examination of the record in this case shows that the Carrier failed to sustain its burden in this case. Award 11222. The claim is hereby sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1966.