

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York, Chicago and St. Louis Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 58, when it suspended Signalman John A. McCorkle for thirty (30) days following an investigation held on April 22, 1963, to determine his responsibility, if any, in connection with motor car, operated by another employe, colliding with an automobile at East 305th Street, Wickliffe, Ohio, on March 21, 1963.

(b) The Carrier, at the investigation mentioned in paragraph (a), failed to prove that John A. McCorkle was responsible for the collision.

(c) The Carrier be required to compensate John A. McCorkle for all time that he was held out of service. [Carrier's File: 30-21-18]

OPINION OF BOARD: This is a discipline case, the essential facts of which are not in dispute. On March 21, 1963, Leading Signalman Frank N. Memmott and Claimant Signalman were occupants of a track motor car that was involved in a collision with an automobile. Leading Signalman Memmott was operating the motor car, while Claimant was an occupant of said motor car having been positioned by the Operator on the right hand side to the rear.

On April 16, 1963, Claimant received a letter from his supervisor advising him to attend an investigation to be held at a time and place designated, to determine Claimant's responsibility, if any, in connection with the collision. This investigation was held on April 22, 1963. On May 6, 1963, Claimant received a letter from the appropriate Supervisor advising him that the evidence presented at the fact finding investigation established that "you failed in your responsibility to keep a constant look-out for the automobile approaching the crossing in accordance with motor car rules and safe practice" and that because of such failure, he was assessed 30 days suspension.

The Operator of the vehicle had filed a claim with this Board alleging the same complaint as the instant Claimant. The Award (No. 12814) in that case was adopted July 31, 1964 by the Third Division. The Claim was sustained on the procedural ground that the Carrier failed to properly apprise Claimant of the Charge against him and thus violated Rule 58 of the Agreement, thereby in effect denying Claimant due process.

The Petitioner, among other things, advances the same argument for this Claimant. We however, do not feel compelled to restrict our reasoning to the procedural question upon which the companion case was decided. Neither do we feel compelled to comment one way or the other on correctness or incorrectness of that particular decision on that particular ground. Suffice it to say that the burden of proof in disciplinary cases is on the Carrier. A careful review of this record, convinces us that the evidence presented does not warrant a finding in Carrier's favor. We will therefore sustain the Claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 23rd day of March 1967.