



Award No. 18258
Docket No. SG-18686

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway Company:

(a) Carrier violated Rule 50(a) of the Signalmen's Agreement when Signalman P. E. Hull was disciplined (dismissal) without an investigation on October 22, 1968, resulting in actual loss of pay and other benefits beginning November 11, 1968.

(b) Carrier now be required to clear Mr. Hull's personal record of charges brought against him by Trainmaster J. R. Hinton's letter of September 24, 1968, and reinstate him to his former position (or to any position his seniority demands) with full pay for all time lost on such positions, insurance coverage, and all other rights and benefits provided for in Agreements between the parties, effective November 11, 1968, and continuing until these requests are granted.

[Carrier's File: B 315-21]

OPINION OF BOARD: The following notice, dated September 24, 1968, addressed to Claimant and three other employees was personally served on Claimant:

"Report to Welfare Building Diesel Facility Avondale La., 9:30 A. M. Monday, September 30, 1968 for formal investigation to develop the facts and place responsibility, if any, in connection with signal gang truck 7284 being loaded in excess of allowable width, and injury [sic] to outside party while truck 7284 was moving west on Hi-way 52 between Luling and Boutte about 5:20 P. M. September 23, 1968.

Bring representative which is permitted by applicable agreements and witnesses desired by you."

After a series of postponements, notice of which was served on or known or should have been known to Claimant absent wilful evasion on his part, hearing was held on October 16, 1968. The three other employees involved ap-

peared as did the General Chairman who fully participated in the proceedings. Claimant failed to appear and as to him the hearing was conducted ex parte without objection being voiced by the General Chairman. At the conclusion of the hearing, in response to question asked by the Hearing Officer, the General Chairman responded that the investigation had been held in a fair and impartial manner.

In its Rebuttal Statement (Submission) Petitioner states:

"In our ex parte submission we have not discussed the guilt or innocence of the claimant under the charge by the Carrier; our position is that the Carrier's conduct was procedurally defective and that such defect is fatal to its position."

This confines the issue before us as to whether Claimant was afforded due process. We find and hold in the affirmative. See our Award No. 13941. Compare, Second Division Awards No. 5987 and 5988.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Claimant was afforded due process.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1970.