

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: (1) Claim of the American Train Dispatchers Association that the Chicago, Burlington and Quincy Railroad Company violated Rule 21 of the Train Dispatchers' Agreement when it demoted Carl W. Thurow from his regular position of Trick Train Dispatcher in the Aurora, Illinois office, to operator, effective Midnight, May 25, 1943, and placed entry of censure on his record without proper notice and without proper hearing.

(2) Dispatcher Thurow shall now be compensated for any and all wage loss suffered between Midnight, May 25, 1943, the day he was illegally removed from the position of Train Dispatcher, and September 1, 1943, the day he was restored to his position, and

(3) Dispatcher Thurow's record shall now be cleared of the entry of censure dated May 22, 1943, and any and all charges in connection therewith.

OPINION OF BOARD: The carrier ordered the claimant to attend an inquiry conducted by the Interstate Commerce Commission and the State of Illinois, to determine the cause of a train collision. The claimant responded, and testified as a witness on behalf of the carrier. On the strength of the facts developed at said inquiry, the carrier subsequently demoted the claimant and placed an entry of censure against his record, all without notice of any charge or hearing, as required by Rule 21 of the effective Agreement of March 1, 1943. While the claimant has since been restored to his former position, he asks that his record be cleared of said censure and that he be compensated for wages lost during the period said demotion was in effect.

The carrier does not deny that there was a failure to comply with Rule 21. It says, however, that this only amounted to a technical non-compliance with a procedural requirement, which ought not to be allowed to obscure the fact that its conduct was fully justified. We cannot regard the carrier's failure to advise the claimant of the nature of the charge and to accord him a hearing as technical. These pre-requisites are in the nature of guarantees of due process, and until they have been complied with any consideration of the merits would be premature. However conclusive the evidence in the possession of the carrier may appear to be, the claimant is entitled to the benefit of the presumption of innocence until his guilt is formally admitted or duly established in accordance with the rules.

Numerous awards have been called to our attention in which this Board has remanded cases to the property for further consideration on account of defects in the proceedings. These precedents have no application here, however, since it affirmatively appears from the record that no charge has ever been preferred against the claimant. Consequently, there is nothing before us to remand, even if we were so disposed.

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 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 the carrier violated the Agreement as charged in the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1944.