

Award No. 12239
Docket No. SG-11434

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and Eastern Illinois Railroad that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 71, when it assessed discipline against Signal Maintainer W. E. Scholz with assigned headquarters at Evansville, Indiana, following an investigation held on February 17, 1959, in connection with an accident which occurred at approximately 8:45 A.M., February 9, 1959, between Ingle and Haubstadt, Indiana.

(b) The Carrier now be required to compensate Signal Maintainer W. E. Scholz for all time lost (five working days) as a result of the unwarranted discipline rendered. [Carrier's File No. 305-202]

OPINION OF BOARD: It is the function of the Board not to substitute our judgment for that of the Carrier, or to decide the matter in conformity with what we might or might not do had we been the triers of the facts. However, we do have the duty to examine the record to ascertain whether or not the employe had a fair and impartial hearing, and in the instant case we find that the failure of the Carrier to call the train crew of Extra 1200 South as witnesses at the investigation did not fulfill the requirement that such hearing be impartial, fair and penetrating, and therefore constituted a violation of the Rules.

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 20th day of February 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12239
DOCKET SG-11434**

The record clearly establishes that Claimant was accorded a fair and impartial hearing, that Carrier was under no obligation to call the train crew as witnesses, and that said crew could not possibly have shed additional light on the material facts of the case. At the end of the investigation Claimant was asked: "Mr. Scholz, have you presented all the evidence you wish in the transcript this morning?" Claimant's reply was: "To the best of my knowledge."

We dissent.

**G. L. Naylor
W. M. Roberts
R. E. Black
W. F. Euker
R. A. DeRossett**