



Award No. 17151

Docket No. MW-16254

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**NORFOLK AND WESTERN RAILWAY COMPANY
(LAKE REGION)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement, particularly Rule 22, when it disciplined Assistant Section Foreman Bernard Julio following an investigation held on December 16, 1964 to determine his responsibility, if any, in connection with motor car No. 1450 in his charge being struck by westbound train No. 51, engine No. 455, on the main track at approximately Mile Post 96.45 west of the west end of the passing track at Swanville, Pa., at approximately 9:40 A.M. on Tuesday, December 8, 1964. (Carrier's file 30-20-123)
- (2) The Carrier, at the investigation mentioned in Part (1) of this claim, failed to prove that Bernard Julio was responsible for the collision.
- (3) The Carrier shall be required to strike the charge from the claimant's record and to allow him payment for the assigned working hours actually lost, less any earnings in the service of the company in compliance with the provisions of Section (e) of Rule 22.

OPINION OF BOARD: Award 12814, involving a dispute on this property, held that the Carrier failed to apprise Claimant properly of the charge against him in violation of the rule, and thus denied Claimant due process.

The "Charge" and the rule in Award 12814 are substantially identical to those in the instant dispute. This Board is not prepared to hold that award palpably erroneous, and is consequently bound thereby.

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 the Agreement was violated.

A W A R D

The Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicato, Illinois, this 15th day of May 1969.