

Case No. 43      Award No. 43

PARTIES Brotherhood of Locomotive Engineers  
to and  
DISPUTE: Union Pacific Railroad Company

"Removal of Level 5 discipline and pay for all time lost associated with the discipline issued to Engineer J. D. Vanbrocklin in reference to a charge of violating Union Pacific's Rule 1.6, being careless with the safety of others."

The Claimant and the Conductor were directed to attend an investigation "to develop the facts and place your individual responsibility, if any, in connection with your leaving the north main track switch Callahan, Texas, improperly lined and locked at approximately 9:30 p.m., Saturday, March 1, 1997 while working as crew members on train LDASOL."

The Board, after a careful review of the record, finds that the claim must be sustained because the Claimant did not receive a fair and impartial hearing.

The course of the disciplinary proceedings is under the control — and direction of the Carrier. The language of the Parties' Agreement, when it addresses matters related to the Employer/Employee relationship, makes it clear that the notion of fairness is fundamental to that relationship. Indeed, for example, the Discipline Rule provides that an employee "will not be discipline without first being given a fair and — impartial investigation." This provision advances the basic principle — that the Carrier will deal with its employees in an impartial fashion in accordance with the commonly accepted standards of fairness.

One of the requirements for a fair and impartial hearing is to take all reasonable steps necessary to establish relevant facts. In this case, both the Conductor and the Claimant, repeatedly testified that a third party, Conductor Courbier, assumed responsibility for the "north switch." Both Union representatives repeatedly asked to have Conductor Courbier present to testify. Clearly, Conductor Courbier could have offered relevant testimony. The failure of the Hearing Officer to call Conductor Courbier also lends further substance to the Organization's claim of pre-judgment.


In summary, while the Board is not unmindful of the Carrier's position in its brief and in its arguments before the Board at this hearing, these arguments cannot overcome the on the property proceedings that did not meet the standards of fairness and impartiality. The parties contracted to provide the employee the right to a fair and impartial trial before any disciplinary action could be taken. If that procedural safeguard can be circumvented by the kind of hearing process used here, the Parties' contract would have little substance. For any disciplinary action to have a legitimate foundation, a "fair" and "impartial" trial, as provided by the Agreement, must occur.

AWARD

The claim is sustained.

  
Jim McCoy  
Organization Member

  
Eckehard Muessig  
Neutral Member

  
C. J. Andrews  
Carrier Member

Dated: 8/20/98