

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FIRST DIVISION**

**39 South La Salle Street, Chicago 3, Illinois**

**With Referee Boyd Leedom**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**BROTHERHOOD OF LOCOMOTIVE FIREMEN  
AND ENGINEMEN**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**GREEN BAY AND WESTERN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim that the record of suspension be removed and compensation for all time lost by Engineer D. Flaherty, Fireman R. Pflanzner and Brakeman L. Sorenson."

**FINDINGS:** The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Carrier relies on a notice of investigation given to claimants, as compliance with the rule providing, in event of a trial for an alleged offense by enginemen or trainmen, that the "charge will be specific". The notice of investigation given by the carrier was inadequate under the rule. Not only did it fail to specify the nature of an offense, it failed to give notice that claimants were charged with any offense whatever. Neither can it be said that claimants waived their right to be informed of the charge, assuming without deciding that such a basic right can be waived. Nor does this record reveal that the hearing conducted by the carrier was free of prejudice to claimants.

Management is not held to the high level of court procedure in developing facts and passing judgment on the conduct of its employes. Neither, however, can the hearing descend to the level of mere formality or device through which management channels either a preconceived judgment or an arbitrary decision induced by the expediency of fixing blame at some point, where blame appears to have existed, and fixing it seems necessary.

Granting that management has a reasonably broad latitude in making such decisions, the proceeding here was sub-standard and resulted in prejudice to the claimants. Prejudice resulted from the cumulative effect of the following circumstances, assuming for the purpose of this award, that not any one of the circumstances by itself would have been prejudicial:

- (1) Management, claimants' adversary in the proceeding, served as investigator, examiner, judge, and jury.
- (2) The evidence discloses no substantial reason why three crew members were disciplined and two were relieved of responsibility. This seems quite clearly true in the light of the statement of carrier's representative during the proceeding, after all relevant evidence was in, that the two crew members exonerated "must share in the responsibility".
- (3) Claimants were not given a chance to face and cross-examine all who testified against them. This was a substantial deprivation as to those witnesses who made affidavits as to the nature of the fire in the journal box.
- (4) Management appears to have been selective in presenting evidence of blame-worthiness and not presenting that which might have tended to exonerate, after having taken ample time to develop the facts and giving claimants very little time and no notice as to the exact potential dispute.

**AWARD:** Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of July, 1954.