



**Award No. 5730**

**Docket No. 5592**

**2-PC-(NYNH&H)CM '69**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL - CIO  
(CARMEN)**

**PENN CENTRAL COMPANY**

**(New York, New Haven & Hartford Railroad Company)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the New York, New Haven & Hartford Railroad Company, hereinafter referred to as the Carrier, unjustly and capriciously suspended Upholsterer Edward O'Rourke, hereinafter referred to as the claimant, from October 25th, to October 29, 1965 both dates inclusive.
2. That the Carrier is requested to reimburse the Claimant for this period of suspension and insure all fringe benefits, vacation, holidays, hospitalization, etc., that may be jeopardized because of this suspension.

**EMPLOYEES' STATEMENT OF FACTS:** By letter dated September 9, 1965 Upholsterer Edward O'Rourke, hereinafter referred to as Claimant, was notified as follows:

"New Haven, Connecticut  
September 9, 1965

Mr. Edward O'Rourke  
Upholsterer  
New Haven Passenger Yard

Dear Sir:

Please arrange to be present at a Hearing (Investigation, to be held in Room 307 Railroad Station, New Haven at 1:00 P.M. EST, September 14, 1965, in connection with the following charges:

1. Unlawful use of pass.
2. Abusive to passenger conductor on Train 22 between New Haven and Boston on September 5th, 1965.

Denial decision was rendered by the undersigned on February 27, 1967.

Copy of transcript of the hearing is attached as Carrier's Exhibit 3.

Copy of Agreement between the parties is on file with this Board and is, by reference, made a part hereof.

**POSITION OF CARRIER:** This is a discipline case in which the claimant was charged with unlawful use of his railroad pass, and of being abusive to the conductor of the train on which he was riding from New Haven to Boston.

As a result of the investigation, the claimant was found guilty of the charge of unlawful use of pass, but the second charge of being abusive to the conductor was dropped.

Claimant O'Rourke was disciplined to the extent of five days suspension following the hearing.

The Employees have alleged that Mr. O'Rourke's suspension for these five days was unjust and capricious, and they have taken exception to the manner in which the hearing was held, the testimony of various witnesses, the correctness of the stenographic report, etc.

The objections raised by the Employees are all set out in the appeal to Mr. G. A. Clarke, see Carrier's Exhibit 1.

All of these objections have been categorically denied in Mr. Clarke's decision of April 4, 1966, see Carrier's Exhibit 2.

We submit that the testimony adduced at the hearing (see the transcript-Carrier's Exhibit 3) will effectively bear out the fact that Mr. O'Rourke was guilty of the charge of unlawful use of his pass.

This is one of the most serious infractions that a railroad employee can commit and, in view of this fact, the 5 days' suspension cannot be regarded as unjust or capricious.

The Board is hereby respectfully requested to deny the claim that Mr. O'Rourke was unjustly suspended and the request that he be reimbursed for the time lost.

All of the facts and evidence contained herein have been affirmatively presented to the Employees.

(Exhibits not reproduced.)

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This is a discipline case in which Claimant was charged with: "Unlawful use of pass."

The record satisfies this Board that Claimant was afforded due process.

The Board finds that Carrier's finding that Claimant was guilty as charged is not supported by substantial evidence. We, therefore, must sustain the Claim.

#### A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.