

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: { System Federation No. 156, Railway Employees'
Department, A.F. of L. - C.I.O.
(Electrical Workers (IBEW Local Union 589))
{
{ The Long Island Rail Road Company

Dispute: Claim of Employes:

1. That the Long Island Rail Road, in violation of the current Agreement, unjustly dismissed from service Electrician Helper Third Railman Thomas M. Rademacher as a result of investigation held on May 3, 1972, continued on May 5, 1972, and appeal hearing held on May 18, 1972, for allegedly fraudulently claiming and receiving sick pay for January 28, 1972.
2. That, accordingly, the Long Island Rail Road be ordered to reinstate Electrician Helper Third Railman Thomas M. Rademacher with all benefits, vacation and seniority rights unimpaired and with compensation for all time lost as a result of said action.

Findings:

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

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

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

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

Claimant was charged with "Fraudulently claiming and receiving sick pay for Janaury 28, 1972." After an investigation, he was notified on May 8, 1972 that he was dismissed from service for "Fraudulently claiming and receiving sick pay for Janaury 28, 1972." Simply stated, the only issue before this Board is whether the record justifies a finding that the Claimant did fraudulently claim and receive sick pay for January 28, 1972 and no other date. And, did the Carrier prove this felonious act by convincing evidence greater than a mere preponderance?

The evidence shows that the Claimant was paid disability allowance for absences that occurred from January 19, 1972 to January 31, 1972. Specifically, the Claimant was absent from work because of an alleged illness and received disability pay. The record also shows that a Thomas M. Rademacher worked for the Town of Brookhaven's Highway Department on January 28, 1972 from 3:00 a.m. to 7:30 a.m. and again from 8:00 p.m. to 2:00 a.m. for which he was paid six hours at straight time and four hours at the overtime rate.

Claimant admitted that he worked for the Town of Brookhaven on January 15 or 16, 1972 but that his brother worked for that Township on January 28, 1972. He said that their time cards somehow got mixed-up. Although the Claimant requested a postponement of the investigation to give him an opportunity to submit evidence that Claimant did not work on January 28, 1972 and although the hearing was so continued to May 9, 1972, no such evidence was submitted by the Claimant. Neither his brother, who could have been a relevant witness, nor anyone from the Town of Brookhaven was produced. Carrier extended him every opportunity to present relevant evidence. His contention that it was his brother who worked on January 28 is of questionable credibility.

A question has also been raised as to whether Claimant received pay for actual work on January 28 or was he paid on that date for work performed on an earlier date. Although some vagueness exists, the record justifies a conclusion that he was paid for work he performed on January 28, 1972.

For the reasons stated, the Board finds that the Carrier did not violate the Agreement and that there is no merit to the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of June, 1974.

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION


ORDER

To accompany { Award No. 6708
{ Docket No. 6520

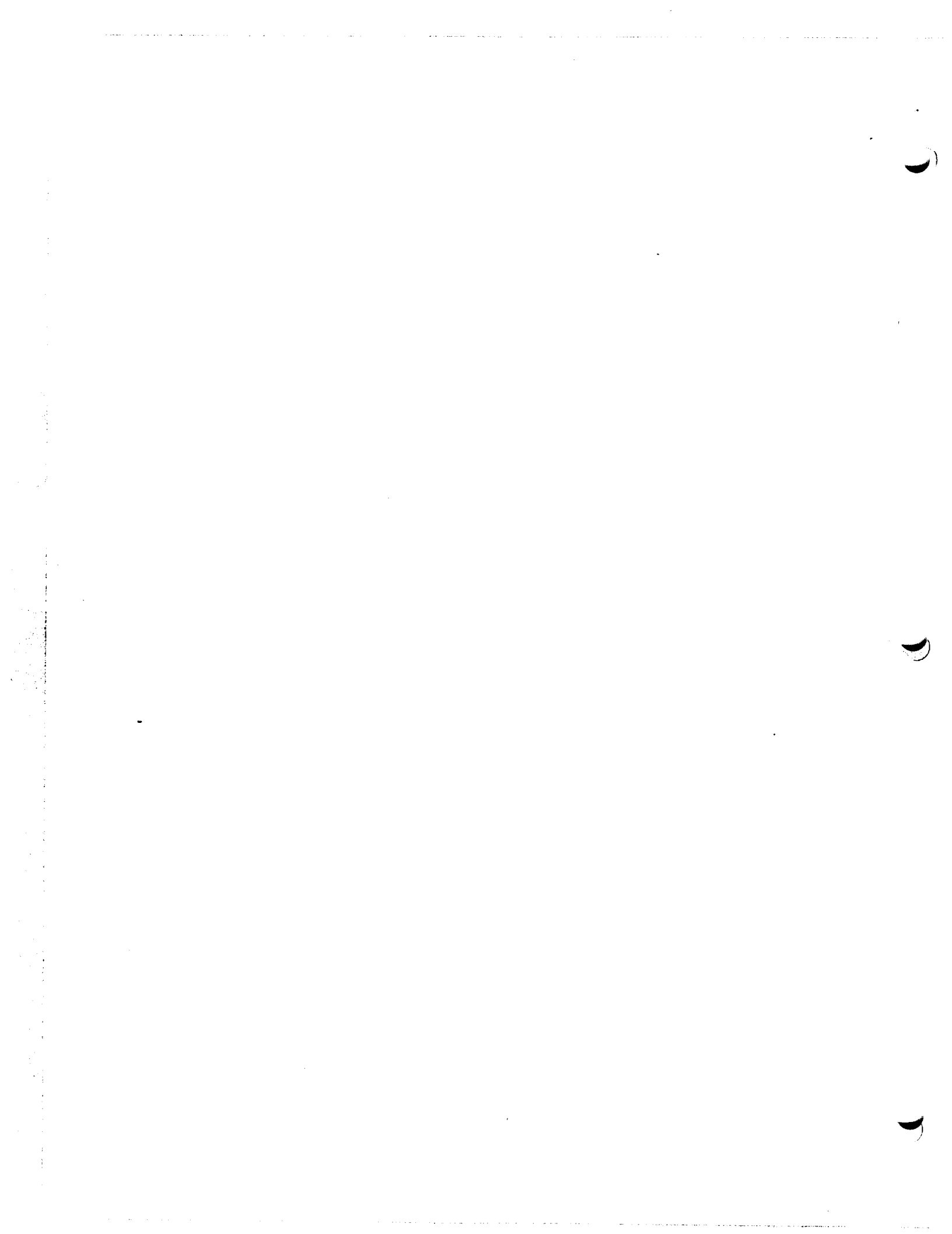
Mr. L. J. Gambaccini, Vice Pres. &
General Manager
Port Authority Trans Hudson Corp.
111 Eighth Avenue
New York, New York 10011

The Port Authority Trans Hudson Corp. is hereby ordered to make effective Award No. 6708 made by the Second Division of the National Railroad Adjustment Board (copy of which is attached and made a part hereof) as therein set forth; and if the award includes a requirement for the payment of money, to pay to the employe (or employes) the sum to which he is (or they are) entitled under the award on or before the 8th day of July, 1974.

Executive Secretary
National Railroad Adjustment Board
By Order of Second Division

By 
Rosemarie Brasch
Administrative Assistant

Dated at Chicago, Illinois, this 7th day of June, 1974.



The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute:

{ Railway Employees' Department - A.F. of L.- C.I.O.
(Carmen)
{
{ Port Authority Trans-Hudson Corporation

Dispute: Claim of Employees:

1. That Car Cleaner R. Williams was unjustly dealt with a warning and reprimand as a result of an investigation held on January 13 and January 20, 1972.
2. That the Carrier be ordered to remove that decision from his personnel file.
3. Accordingly, he is entitled to be compensated in the amount of 7 hours and 45 minutes at the pro rate of pay.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Claimant was Car Cleaner regularly scheduled to work from 11:00 p.m. to 7:00 a.m. on Monday through Friday. He worked his shift from 11:00 p.m. on Thursday, December 30, 1971 to 7:00 a.m. on Friday, December 31, 1971. He was asked to work the second shift from 7:00 a.m. to 3:00 p.m. on that Friday. Carrier alleges that he was not on the work site for the overtime shift as directed.

On January 6, 1972, Carrier advised the Claimant that an investigation would be held on January 13, 1972 to determine the reason for his absence from duty and his violation of Rule 48. After the investigation, the Carrier advised the Claimant on February 16, 1972 that "the disci-

pline imposed in this case shall be a warning and reprimand, a copy of which will be entered in your personnel file."

In the meantime, the Claimant had filed a time claim for eight (8) hours at the straight time rate and eight (8) hours at the overtime rate of time and one-half. He was paid eight (8) hours at straight time for his work from 11:00 p.m. to 7:00 a.m. and he was paid 15 minutes at time and one-half.

The basic issue is whether or not the Claimant reported and did work the hours between 7:00 a.m. and 11:00 p.m. He admitted that he was assigned to work those hours.

Carrier relies exclusively on the testimony of the Road Inspection Pit Foreman who gave evidence that he first noticed Claimant's absence from duty about 7:30 a.m. At 8:05 a.m. he said he inquired of the Claimant and found that no one had seen him. He checked the platform, the locker rooms, toilet, and the Dispatcher's office. Claimant had been seen at the Dispatcher's office about 7:15 a.m. He even left his time card.

At the request of the Foreman the Dispatcher paged the Claimant who did not respond. He continued to look for the Claimant until about 10:40 a.m. In the meantime, a replacement had been called.

Claimant testified that, on the contrary, he checked in between 7:15 a.m. and 7:20 a.m.; he went to the shanty on the opposite platform from the Dispatcher's office and picked up some rags; he then proceeded to the trains and wiped "windshields on trains going to 33rd Street." He left the station for "A" yard about 9:15 a.m. or 9:20 a.m.; he then cleaned cars in "A" yard. At 10:55 a.m. he went to the lockerroom and had his lunch from 11:00 a.m. to 11:30 a.m. There is no dispute that this was his scheduled lunch period. After lunch he went to "B" yard where he washed cars until 3:00 p.m., his quitting time. He tried several times to call the Dispatcher's office to report off, but the telephones were busy so he left.

Carrier has failed to establish by a preponderance of convincing evidence that the Claimant did not work the 7:00 a.m. to 3:00 p.m. shift. There is no doubt that the Foreman could not locate him between 7:35 a.m. and 10:40 a.m. But that is not unusual in an area of this kind. Considerable construction work was being done in the immediate vicinity, a lot of loud noises existed, the PA system was not in the best working order, Employes had complained and the Carrier was well aware that the paging system was inadequate. And there is no evidence that anyone was looking for the Claimant between 10:40 and 3:00 p.m. If the Foreman had looked in the locker room about 11:00 a.m. he would

probably have seen the Claimant eating his lunch.

Even Claimant's replacement testified that he came on duty at about 9:30 A.M. and, in his opinion, the cars in the "A" yard "were pretty clean." They looked "like someone was through them." He only worked two hours, leaving about 11:30 a.m. He was told to have the Claimant call the office if he saw him. He did not know him. Claimant did not violate Rule 48.

Carrier also argues that: "Since the only discipline assessed against the defendant was a warning and reprimand . . . that there is no jurisdiction over the subject matter of this claim to the extent that it seeks more than to redress the discipline which was imposed as a result of the disciplinary hearing from which an appeal is being made." A time claim was filed on December 13, 1972. It has been pending from that day on. On What basis the Carrier paid the Claimant 15 minutes at the over-timerate is difficult to understand. We assume that the Carrier agreed that the Claimant had reported at about 7:15 a.m. But why was he paid the 15 minutes? In any event, we must surmise that Claimant did report for work on that shift.

The record also shows that at no time during the processing of this claim on the property did the Carrier challenge the validity of the time claim. On March 8, 1972 Carrier wrote the General Chairman that an appeal hearing of the decision of a reprimand and warning would be held at 10:00 a.m. on Wednesday, March 15, 1972. That letter also contained the following paragraph:

"Furthermore, an appeal hearing in the matter of a denial of a time claim submitted by Mr. Williams dated February 16, 1972, will be held at 10:30 a.m. on Wednesday, March 15, 1972, at the same location."

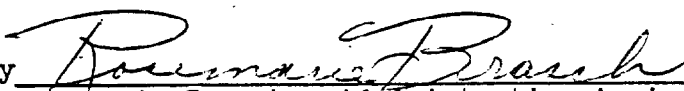
For the reasons herein stated, the Board finds that the Carrier violated the Agreement, the penalty should be removed, and the Claimant should be compensated as requested in the time claim.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of June, 1974.