

Award No. 4907
Docket No. CL-5010

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

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

Ruben A. Gayton, Trucker, Philadelphia Transfer, Philadelphia, Pennsylvania, be returned to service with all rights unimpaired and compensated for all monetary or wage loss sustained dating from March 3, 1948, until adjusted. (Docket E-602)

OPINION OF BOARD: Claimant is a regularly assigned trucker used in the capacity of a stower at the Philadelphia Transfer, Philadelphia Terminal Division, Philadelphia, Pennsylvania, with seniority date of September 25, 1941.

This claimant on February 12, 1948 received from W. E. Leonard, Transfer Agent, notice stating that the payroll for the second half of January 1948 indicated that the claimant was absent without permission on January 16, 18, 22, 24, 25, 29 and 31, 1948. The claimant in the space provided on the bottom of the letter on February 12, 1948 said, "I was off on account of being sick, but I failed to report off." On February 12, 1948, claimant received a notice of a charge lodged against him, from W. E. Leonard, Transfer Agent, stating "Absent from duty without permission at Philadelphia Transfer January 16, 18, 22, 24, 25, 29 and 31st, 1948, and previous discipline record. You will report to office of J. Morrison, Jr., General Foreman, 2:00 P.M. Feb. 12, 1948." A hearing was held on the 12th of February and the only evidence produced at the hearing was the claimant's that he had been sick on the days charged. He was dismissed from service on March 3, 1948 for the offense "Absent from duty without permission at Philadelphia Transfer January 16, 18, 22, 24, 25, 29 and 31st, 1948, and previous discipline record." The dismissal was put into effect March 3, 1948.

The only evidence produced at the hearing was the claimant's statement that he had been sick and his testimony that he had been sick. The Carrier offered no testimony to refute, contradict or challenge the statement of claimant. The evidence offered does not sustain the offense charged or the offense of which the claimant was found guilty. This claim will be sustained for the reason that the evidence developed at the trial did not justify discipline.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 claimant, Ruben A. Gayton, should be reinstated with full seniority rights and be compensated for the difference between the amount earned while out of service or while otherwise employed and the amount he would have earned had he not been held out of service.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of July, 1950.