

Award No. 6360

Docket No. CL-6391

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

Discipline of two weeks' suspension imposed upon J. P. Degnan, Ticket Clerk, Pennsylvania Station, Baltimore, Maryland, Maryland Division, be removed and that he be reimbursed for the loss of two weeks' pay, December 24, 1951, to, and including, January 6, 1952. (Docket E-795).

OPINION OF BOARD: This is a discipline claim, and it is alleged by the claimant, J. P. Degnan, that Carrier has imposed an undue and severe penalty upon the employe, consisting of a suspension from work for a period of two weeks, and loss of pay. There is a Joint Statement of Agreed-Upon Facts in the record, dated as of January 28, 1952, executed on behalf of the employe by his General Chairman, and on behalf of Carrier by its Superintendent.

The employe contends he was not given a fair and impartial hearing at the investigation held by Carrier, that he was not given an opportunity to face his accuser, and that the penalty assessed by Carrier, consisting of suspension and loss of pay was unduly severe.

We conclude from a thorough review of the record, the employe received a fair and impartial hearing at the investigation conducted by Carrier. He was present with his representative, was given an opportunity to cross-examine witnesses present, and no comment or criticism was made by claimant or his representative although the opportunity was afforded them in the record. It is admitted the alleged argument between the passenger and the employe occurred and that in the heat of the argument the employe called the passenger a name, regardless of the fact the passenger had first called the employe a name.

The employe by exercising calm judgment could have avoided the argument with the passenger, but chose to do otherwise. While we cannot condone the fact the argument in the first instance was precipitated by the passenger, we cannot agree with claimant that he was justified in continuing the argument, and calling the passenger a name. We, as a Board, cannot substitute our judgment for that of Carrier, and find the action taken by Carrier was in no way arbitrary or capricious. The claimant, in our opinion,

received a fair and impartial hearing at the investigation held by Carrier, and nothing would have added to the facts had the passenger been present to testify. The facts are agreed between the parties and Carrier through its judgment, assessed the penalty, which in our opinion was fair and reasonable.

Numerous awards have been cited by the parties to sustain their contention, but it is well established on this Division that unless the claimant was denied his rights to defend himself, or if the action of Carrier was arbitrary or capricious, this Board would not substitute its judgment for that of Carrier. The testimony in the record amply justifies the action taken by Carrier, even though there is contradiction contained as to some of the facts, it is sufficient to justify Carrier's action.

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 Employees involved in this dispute are respectively carrier and employee 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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1953.