

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, 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:

(a) The Carrier violated the Clerks' Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 6-A-1 (a), when it dismissed Frank Satterfield, Baggage man, Baggage Department, Pennsylvania Station, New York, New York, on May 22, 1957, without a fair and impartial trial.

(b) Frank Satterfield be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from May 22, 1957, until adjusted.

OPINION OF BOARD: This case presents a controversy as to whether the Claimant was dismissed from service without a fair and impartial trial in accordance with Rule 6-A-1 (a) of the applicable Agreement. Claimant's main contention is that he was tried in *absentia* without "reasonable advance notice" of the time and place of trial as required by Rule 6-C-1 (a), despite the fact that he gave prior notice to the Carrier that he would be unable to attend on the date fixed for the trial.

Rule 6-A-1 (a) reads as follows:

"Employees will not be suspended nor dismissed from service without a fair and impartial trial."

Rule 6-C-1 (a) states that:

"An employee who is accused of an offense and who is directed to report for a trial therefor, will be given reasonable advance notice in writing of the exact charge for which he is to be tried and the time and place of the trial."

By letter dated May 10, 1957, and sent on that date by special delivery mail, certified, return receipt requested, Claimant was notified of the specific charges against him and "to arrange to attend trial at 9:15 A. M. D. S. T. on . . . May 15, 1957" at a place stated therein. The return receipt indicates that this letter was delivered to Claimant on May 13, 1957. The record shows that there is a dispute as to whether Claimant informed the carrier on May 14, 1957 that he would be unable to attend the trial on May 15, 1957. On that date Claimant did not appear and the trial proceeded in his absence. By notice dated May 22, 1957, the Claimant was advised that he was disciplined by "Dismissal in all capacities" on the basis of the charges mentioned in the initial letter.

The Rules quoted above are for the benefit of an employe who is accused of an offense and obligate the carrier to provide such an employe with a "fair and impartial trial" as well as "reasonable advance" written notice of the exact charge and the time and place of the trial. When Claimant received the carrier's letter dated May 10, 1957, which stated the specific charges against him and the time and place of the trial thereon, he was under a duty to attend the trial on the date fixed for it or to arrange with the carrier for trial on another date. Willful and deliberate failure of an employe who is accused of an offense to attend or participate in his trial authorizes the carrier to proceed without him. (See Awards 4433, 4066.)

The record does not warrant the view that Claimant willfully and deliberately failed to attend the trial on May 15, 1957. The record discloses a factual dispute as to whether Claimant applied for a postponement of the trial. Claimant asserts that on May 14, 1957, he went to the office of Superintendent Falt to advise the latter that he would be unable to attend the trial on May 15, 1957; that Claimant gave this information to Clerk Dunphy who suggested that Claimant write it in a note and stated to Claimant that he would see that such note was delivered to the proper authorities; and that Claimant wrote such note addressed to Chief Clerk Kiernan. These assertions of Claimant are denied. Conflicts of this nature cannot be resolved on this appeal. (See Awards 6367, 9046, 6430, 9320.)

Our objective on this appeal is to resolve this controversy by effectuating, insofar as we can, the aims expressed in the applicable Rules. The purposes of the Rules quoted above are, as stated therein, to assure Claimant of a "fair and impartial trial" on "reasonable advance notice". From the state of the record here, it is the opinion of this Referee that these purposes can best be achieved if this claim is remanded, and a new date set for the trial, which date will be agreeable to the parties, and the trial be held in accordance with Rule 6-A-1 (a) and such other Rules as may be applicable under the Agreement, on the charges specified in the carrier's letter dated May 10, 1957. (See Award 3346.)

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this division of the Adjustment Board has jurisdiction over the disputes involved herein; and

That the claim be remanded and a new date set for the trial in accordance with the Opinion.

AWARD

That the claim be remanded and a new date set for the trial in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 31st day of March, 1960.