

Award No. 10696

Docket No. CL-12766

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, 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 (GL-4991) that:

(a) Discipline of dismissal from service imposed on Felix S. Varela, Trucker, 37th Street Station, New York, N. Y., New York Region, be removed from his service record, and that

(b) Felix S. Varela be compensated in accordance with Rule 7-A-1(d) for all monetary loss sustained from December 4, 1959. (Docket 810)

OPINION OF BOARD: Claimant was employed by Carrier as an Extra Freight Trucker, 37th Street Freight Station, New York, N.Y. About 1:00 P. M. October 5, 1959, he was ordered to report immediately to Pier 79, about four blocks away and under the same jurisdiction, to complete his tour of duty. He did not report there, but signed the time sheet for eight hours' work. Carrier dismissed Claimant after trial on charges alleging both as infractions, and adhered to the dismissal upon appeal. Claimant asserted that while walking to Pier 79 he became ill. A stranger, who testified Claimant seemed and looked sick, drove him home after stopping to ask him for directions. Claimant called to have the time sheet corrected the following day.

Employee claimed that the discipline of dismissal imposed was not warranted even if he were guilty; and that he did not receive a fair and impartial trial, contrary to Rule 6-A-1(a). As to the latter claim, the record demonstrates reproachful conduct at the hearing by both parties, justifying a limitation of the Board's determination to the claim that the discipline be removed from Claimant's service record and that he be compensated monetarily.

(In view of the evidence disclosed by the record and Claimant's 4-year record of service with Carrier apparently without infraction except one for which he received a reprimand, the Board feels that the discipline of dismissal was unreasonable and excessive for the offenses involved and that Claimant should be restored to service with all rights unimpaired but without monetary compensation.

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 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 Claimant should be restored to service with all rights unimpaired but without monetary compensation.

AWARD

Claim disposed of 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 19th day of July 1962.