

Award No. 11278

Docket No. CL-13275

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
(EXCEPT BOSTON AND ALBANY DIVISION)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5134) that:

(1) Carrier violated the Clerks' Agreement on July 3, 1961 when it commenced a hearing on charges against Mr. George H. Kelsch without properly notifying him of the hearing, and without advising him of the precise charge against him.

(2) Carrier further violated the Clerks' Agreement on July 31, 1961 when,

- (a) Carrier reconvened the hearing without properly notifying Mr. George H. Kelsch.
- (b) Carrier reconvened the hearing after having agreed on July 3, 1961 to a continuance until such time as Mr. Kelsch could be present; the time and date to be mutually agreed upon by the Carrier and the Organization.
- (c) Carrier refused a request made at the hearing for a continuance until such time as Mr. Kelsch could be available to attend.

(3) Carrier further violated the Clerks' Agreement on September 27, 1961 when it refused to permit Mr. Kelsch to resume work on his regularly assigned position of Baggage and Mail Trucker, Passenger Station, Albany, New York.

(4) Carrier now be required to restore Claimant, Mr. George H. Kelsch to his regularly assigned position with seniority and all rights unimpaired and his record cleared of charges against him.

(5) Carrier shall now reimburse Claimant for all wage loss sustained, commencing September 27, 1961, and until such time as he is restored to service.

OPINION OF BOARD: This is a discipline case in which no dispute is before us concerning Claimant's guilt of the charge of violation of Carrier's Rule L-1, providing—

“L-1. The unauthorized removal or disposal of any material from railroad property or property served by the railroad is prohibited.”

The record herein shows that Claimant was arrested by the Albany City Police on June 26, 1961, charged with theft of two target pistols from the U.S. Malls, to which charge he pled guilty in Albany City Court on June 27, 1961, and was sentenced by the City Judge to confinement for ninety days in the Albany County Jail.

In light of these circumstances, we cannot find that Claimant's rights under the Agreement were jeopardized and consequently deny the claim.

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 Employee 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 Carrier's action will not be disturbed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Secretary

Dated at Chicago, Illinois, this 29th day of March 1963.