

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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-5328) that:

(a) Discipline of dismissal from service imposed on Alvin S. Chojnowski, Extra Station Baggage-man, Pennsylvania Station, Baltimore, Maryland, Chesapeake Region, effective October 16, 1961, be set aside and removed from his service record.

(b) Claimant be restored to service with seniority and all other rights unimpaired. [Docket 1199]

OPINION OF BOARD: Claimant entered the service of Carrier as an extra trucker on August 7, 1952. On September 27 and 28, 1961, he was employed as Extra Station Baggage-man, at Pennsylvania Station, Baltimore, Maryland.

The Joint Statement of Agreed-Upon Facts recites, in part, the following:

"On October 3, 1961, Mr. Chojnowski was presented a proper notice to appear at the Foreman's Office, Pennsylvania Station, Baltimore, Maryland, at 10 A.M. on October 5, 1961, for trial in connection with the following charge: Not available when called for duty, September 27 and 28, 1961, Pennsylvania Station, Baltimore, Maryland.

Claimant was afforded a fair and impartial trial and as a result was disciplined by dismissal (previous discipline record considered). Dismissal was placed in effect on October 16, 1961."

Petitioner asserts that the questions to be decided are (1) whether Claimant was guilty of the offense charged, (2) whether he received a fair and impartial hearing, (3) whether the discipline penalty of dismissal was warranted, and (4) whether his record should be cleared and that he be compensated for lost time.

Claimant was charged with not being available when called for duty on September 27 and 28, 1961. At the hearing the following question and answer took place:

Donnelly: "Mr. Chojnowski, what do you wish to say in reference to this case and reason, if any, why you should not be so charged—not available when called for duty, September 27 and 28, 1961, Pennsylvania Station, Baltimore, Maryland?"

Chojnowski: "Well, the only thing that I can say is that I am guilty of the charge and on the 26th, I think I came in to ask Mr. Chilcoat to be dropped to the bottom of the list. Well, for reasons, I had to take my mother to my aunt's house because her nerves are bad and they do not have a phone out there in Glen Burnie. Then, on the 27th, I went out and no one was home to answer the phone, and I did not think I would be called for work that day. On the 28th, nobody was home to answer the phone, and I stepped out again and I just did not get the call. That is all I have to say."

Petitioner argues that Claimant's absence on the 27th was not willful because he had to take his mother to his Aunt's house and asked to be dropped to the bottom of the extra list. The fact is that Claimant said that "on the 26th, I think I came in to ask Mr. Chilcoat to be dropped to the bottom of the list." (Emphasis ours.) He did not say affirmatively and definitely that he did so. He did say that he was guilty of the charge.

Furthermore, Claimant admitted that there was no one at his home on the 28th to answer the telephone. The record shows that his Foreman not only called Claimant's home on both dates, but on the 28th also called another number given to the Foreman by Claimant's sister. Claimant's sister answered the telephone at Claimant's home and referred the Foreman to the latter number where she thought Claimant could be reached.

It was Claimant's duty to keep himself available for extra work. If he found it necessary to leave his home knowing that there would be no one to receive a work message, he should have telephoned his Foreman or assignment clerk and inquired if they had tried to reach him, and if a work assignment was available.

At no time, on the property, did Petitioner question Claimant's guilt. Petitioner asserted only that the penalty was too severe.

Item 5 of the Extra List Agreement does not prohibit Carrier from disciplining an extra employe who, without good and sufficient cause, was unavailable for work when called. See Award 11047.

Claimant admitted that he received a fair and impartial hearing. When he was asked at the hearing if he desired representation, he replied: "No sir." Further, the Joint Statement of Agreed-Upon Facts says that "Claimant was afforded a fair and impartial trial."

Claimant had nine years of seniority with the Carrier. During that time he was reprimanded and disciplined seven times prior to his dismissal. All but one of these were for failure to report for duty when assigned and unexcused absence from work. There is no evidence that Carrier was vindictive, arbitrary or capricious. In the absence of such a showing, we may not substitute

our judgment for the Carrier. See Awards 11803, 11017, 11324, 11531, 10642, 10595, 10596, and others.

On the basis of the record, there is no basis to clear Claimant's record and to reinstate him with compensation for lost time.

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 Employees involved in this dispute are respectively Carrier and Employees 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 did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.