

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

LOS ANGELES UNION PASSENGER TERMINAL

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5405) that:

(a) The Los Angeles Union Passenger Terminal violated the Rules of the Agreement when on May 31, 1962, it dismissed Mr. Paul H. Richards from service based on charges unproved and in violation of procedural rights; and,

(b) The Los Angeles Union Passenger Terminal shall now be required to restore Mr. Paul H. Richards to service with seniority rights unimpaired and allow compensation for all wage loss from May 8, 1962, the date he was suspended from service, until restored to service with all rights unimpaired.

OPINION OF BOARD: On January 13, 1962, Claimant Paul H. Richards was cited for investigation in regards to his alleged improper handling of certain pieces of baggage, the hearing being set for January 23, 1962. Following an agreed postponement, the hearing convened on April 24, 1962. At the outset of such hearing, the Claimant's representative requested a further postponement for the reason that Claimant Richards was ill and unable to appear. Carrier's Terminal Superintendent, R. D. Workman, acting as conducting officer denied the request on the grounds that the request had not been made prior to the opening of the investigation. He further announced that the investigation would be held, that the testimony of the witnesses present would be taken and that the testimony of the Claimant would be taken upon his return from sick leave. Claimant's representative then declared that as Claimant would not have an opportunity to cross-examine his accusers, the hearing would not be proper and that he, as Claimant's representative, would not participate and withdrew.

Notwithstanding the fact that neither Claimant Richards nor his representative, were present, the conducting officer, Superintendent Workman, received the oral testimony of the two witnesses present, a team of Terminal Inspectors, employed by the Carrier.

On May 7, 1962, the Claimant had obtained a doctor's release and reported to the Superintendent the same day for the purpose of returning to service; the Superintendent told him, then, that he could not go back to work until the investigation was completed, Claimant theretofore not having been suspended from service.

The investigation reconvened on May 22, 1962, with the Claimant, his representative and witnesses present with the exception of the two Terminal Inspectors who had testified on April 24, 1962. After the testimony of the present witnesses had been taken, Claimant's representative asked that the Terminal Inspectors who theretofore had been examined be presented for cross-examination. The conducting officer refused to grant the request but read their testimony into the record over the protest of Claimant's representative, he further threatened to discontinue the investigation if the representative continued to protest.

This procedure, herein described, does violence to at least two fundamental and basic requirements necessary to provide to the Claimant the fair and impartial hearing contemplated by the Discipline Rules of the Agreement.

- (a) The accused must be afforded the opportunity to be present at the investigation and to have his representative present.
- (b) He must have the opportunity of cross-examining the witnesses presented against him who have testified orally.

It is essential to a fair and impartial hearing that where accusing witnesses are called by the Carrier the accused (Claimant) shall be present at the examination of these accusing witnesses and be afforded the right of cross-examination. See Award 2162—Blake.

We are not confronted here with a situation where Carrier is unable to call an absent witness because there is no way to compel his attendance because the Carrier has no power of subpoena. In the instant case, the two Terminal Inspectors who had been called to testify at the first hearing were employees of the Carrier and could have been ordered to attend the second hearing so as to give Claimant or his representative an opportunity to cross-examine them.

Though there are other alleged claims of irregularity on the part of the conducting officer in the manner of procedure we see no necessity for proceeding further with that in this Opinion as there is enough considered here to disclose that his conduct was arbitrary and capricious and sufficient to indicate that Claimant did not have a fair and impartial hearing.

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 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

The Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1964.