

Award No. 13063
Docket No. CL-14692

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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-5475) that:

- (a) Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 6-A-1, 6-D-1 and 7-A-1 (d), when it held Mr. T. C. Paton, Extra Usher, Pennsylvania Station, New York, New York Region, out of service commencing January 4, 1961, and subsequently imposed discipline of dismissal from service.
- (b) T. C. Paton be restored to service of Carrier with seniority and all rights unimpaired and his record cleared.
- (c) T. C. Paton be reimbursed for all wage loss sustained as a result of the Carrier's action. (Docket 1370)

OPINION OF BOARD: This is a discipline case involving Theodore C. Paton, who occupied position as Extra Usher at the Pennsylvania Station, New York, New York Region. On January 6, 1961, the Station Master notified him that he was to stand trial on January 11, 1961 on charges of tardiness and unauthorized extension of a lunch period. After the trial he received a notice advising him that he was disciplined by dismissal from service effective March 14, 1961. He appealed to Superintendent-Personnel and was accorded an appeal hearing on March 20, 1961, which resulted in a denial. He was notified of this decision by letter dated March 28, 1961. On March 30, 1961 he tendered his resignation but then withdrew it and carried his appeal to the Manager of Labor Relations. This official also denied his appeal. By letter of October 31, 1961, the Division Chairman of the Brotherhood requested the Superintendent-Personnel to prepare a Proposed Statement of Facts to be used in a joint submission of the case to the General Chairman and to the Manager of Labor Relations. Although this request was first denied, the Manager of Labor Relations later instructed the Superintendent-Personnel to prepare the statement which was completed and signed by the Division Chairman and by the Superintendent-Personnel. The claim was again declined on July 3, 1963 by Carrier's highest officer, the Manager of Labor Relations.

The Brotherhood requests that Mr. Paton be restored to service of Carrier with his seniority and all rights unimpaired and that he be reimbursed for wages lost as a result of his dismissal. It argues that Mr. Paton was not given a fair and impartial trial in accordance with Rule 6-A-1. It states that the past record of Mr. Paton was used to find him guilty of the charges. Furthermore, it maintains that the severity of the punishment, considering the nature of the charges, supports its position that Carrier was arbitrary and capricious.

In considering Carrier's request that the claim be barred under Rule 7-B-1 (i) because more than a year elapsed between the date of denial to Mr. Paton and the appeal to this Board, we find controlling the subsequent action of the Brotherhood in pursuing the claim. After the Joint Statement of Agreed Upon Facts, the claim was appealed within the time limit. It is, therefore, properly before this Board.

There is nothing in the record to indicate that the trial was other than fair and impartial. Claimant was properly notified of the charges, was informed of the date of the trial, was represented by a member of the Brotherhood, and had full opportunity to hear and examine witnesses and to testify in his own behalf. At the trial, Mr. Paton admitted that he was late, as set forth in Charge No. 2. He offered the excuse that it was necessary for him to appear in court. We acknowledge the importance of his court appearance, but we also recognize that he had a responsibility to inform Carrier of the likelihood of his tardiness because of his court hearing. Moreover, despite his previous knowledge of his obligation to appear in court, he accepted an Extra Usher assignment for that morning.

Mr. Paton also failed to present an acceptable reason for extending his lunch period without permission as claimed in Charge No. 3. He merely explains his absence with the statement that he thought he was entitled to the extra time he took. The record shows that he used some of this time to attend to personal business at a finance company.

On Charge No. 4, Claimant's excuse was also unsatisfactory. He admitted that he reported late for his 10:30 assignment and then went out for breakfast.

Since Carrier dropped Charge No. 1 at the trial, we find no need to discuss it. As to Charges No. 2, No. 3 and No. 4, we find no reason to disagree with Carrier's finding that Mr. Paton was guilty of the charges.

Although Mr. Paton had previously been disciplined for a number of infractions, we are satisfied that the record fully supports the charges without reference to these past infractions. After the determination of his guilt, however, his previous record was properly considered in assessing the penalty. The dismissal penalty was not arbitrary and capricious in light of the established guilt of the charges coupled with his past discipline record.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1964.