



Award Number 17838

Docket Number CL-18438

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6658) that:

1. Carrier violated the Clerks' Agreement in its dismissal of Mr. Louis Wacke, Station Baggageman, Pennsylvania Station, New York, N.Y., effective October 5, 1968.
2. Mr. Louis Wacke be reinstated without loss of seniority, his record cleared of the charges, and be compensated for his loss of wages.

OPINION OF BOARD: Claimant, whose seniority date was June 29, 1943, was dismissed from service effective November 5, 1968. He had been held out of service since October 5, 1968.

On October 7, 1968 Claimant was advised to report for an investigation on the following charges:

"1. Absenting yourself without permission from your assigned work location, Diagonal Platform, Penna. Sta., New York, at 1:30 A.M., October 5, 1968.

"2. Attempting to defraud the Company of wages on October 5, 1968 by wilfully submitting to Timekeeper, your personal Time Card for October 4, 1968, which had been altered from two (2) hours actually worked and falsified to read four (4) hours worked."

Claimant absented himself from his work station from 1:30 A.M. to about 3:30 A.M. on October 5, 1968. This much is agreed to. All employees took a coffee break of about fifteen (15) minutes about 1:15 A.M. Claimant had previously purchased coffee for all employees working on the Diagonal Platform. At this point there is a conflict of evidence.

Claimant testified that when he returned with coffee for his fellow employees he was one container short. He then asked for and received permission from his Foreman to go and get another cup. The Foreman testified that he was never asked and that he never gave the Claimant permission to leave the coffee break area. But even if the Foreman did give permission there is no good and valid reason why the Claimant was gone for about two (2) hours. He explains this by contending the delay was occasioned by a

sore toe that ejected pus. The walk to and from the coffee shop is a matter of minutes. When he got back the toe was still sore. He could have returned immediately and if his toe was injured he should have made it known to his foreman. There is no evidence in the record to justify a continued absence of two (2) hours.

As to the charge that the Claimant altered his time card to defraud the Carrier, there is no probative evidence to support the allegation. When Claimant was sent home for the unauthorized absence as charged in item 1, the Foreman gave him the time card and told him to deliver it to the timekeeper. The card does show a change from 2 to 4 hours. But there is no convincing evidence in the record that the Claimant made the change. None of the witnesses at the hearing could say who made the change; none could say that the Claimant did so.

Carrier's charge of the falsification is predicated solely on circumstantial evidence. The circumstances are not closely related to strong substantial facts. The evidence submitted by the Carrier is not sufficient to sustain a discharge. Carrier did not meet the burden of proof required in discharge cases. The dismissal from service on this charge was arbitrary, capricious and unreasonable.

That leaves the Carrier with the right to discipline the Claimant only for the unauthorized absence from his work area. A dismissal from service for this act, for an employee with more than twenty-five (25) years of service, is unjustified. The penalty is too severe for the offense. And this is true even though Claimant had been suspended for thirty (30) days on June 26, 1968 for insubordination and abusive language. All other recorded disciplines were four (4) or more years before the incident in this case.

Eighteen (18) months have elapsed since the Claimant was first held out of service. Because the Claimant has not demonstrated a willingness to cooperate with and follow the instructions of his supervisors, a discipline penalty commensurate with the time he has been out of service is in order. For this reason, the Claimant is entitled to be reinstated as an employee of the Carrier with all seniority and other rights preserved, but without 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 the Carrier violated the Agreement.