

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6661) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of a three day suspension on Bennie Maddrick, Station Baggage-man, Pennsylvania Station, New York, New York Region, Metropolitan Seniority District.

(b) Claimant Bennie Maddrick shall now have his record cleared of the charges brought against him on July 12, 1968.

(c) Claimant Bennie Maddrick shall now be compensated for three days' wage loss sustained by him as a result of the discipline.

OPINION OF BOARD: Claimant entered Carrier's service as a Trucker on February 7, 1947. On July 12, 1968, he was assigned as a Station Baggage-man at Pennsylvania Station, New York, New York.

On July 12, 1968, Claimant was assigned to work, and was working, at the Kansas City Chute on the diagonal platform. Claimant informed his foreman, Tom J. Howard, that dust from "soapstone", present at the location, was aggravating a skin disorder with which he was afflicted. The Foreman, forthwith, assigned him to work on the "walkie"—a wheeled vehicle controlled from a handle which is used to guide it. Assistant General Foreman Richardson, upon hearing of this assignment, countermanded the Foreman's directed assignment of Claimant and told Claimant to work the Chute. Claimant at 5:20 P.M. allegedly left his job location on the platform to seek out and appeal to the Assistant General Foreman's immediate supervisor—this after being told by the Assistant General Foreman that if he could not work the chute he would have to be checked out and go home. Unable to find the Assistant General Foreman's supervisor, Claimant returned to the chute, but on advice of a "Mr. Mulvey", he complied with the Assistant General Foreman's instructions by electing to go home rather than work the chute. The vague record before us indicates that Claimant was checked out by the Assistant General Foreman at 6:05 P.M. and was not paid for the subsequent time of his work day.

Under date of July 12, 1968, Carrier served Claimant with the following charge:

- "1. Left location at 5:20 P.M. and failed to return until 6:05 P.M.
2. Failed to follow instructions of Assistant General Foreman R. Richardson.
3. Complained that he was unable to work chute assigned on Diagonal Platform complaining dust from mail sacks causes his skin to itch."

Hearing was held on August 9, 1968. During the hearing Carrier struck allegation 3 of the charge.

During the hearing Claimant admitted allegation 1 of the charge. Therefore, only allegation 2 was at issue. The burden of proof—this being a disciplinary case—was vested in Carrier.

By Notice of Discipline dated August 16, 1968, Carrier found Claimant guilty as charged in allegations 1 and 2; and, imposed discipline of three (3) days' suspension. All appeals on the property were in turn denied.

The record shows that the only instruction to Claimant gave him an election: (1) to return to the Chute; or (2) be checked out and go home—Claimant chose the latter. This we find was not insubordination, as argued by Carrier in its Submission. Carrier having failed to satisfy its burden of proof, we are compelled to sustain 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 the 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 failed to prove the charges against Claimant by substantial material and relevant evidence of probative value.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1970.

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