

Award No. 18285
Docket No. CL-18745

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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-6764) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 6-A-1 to 7-A-1, inclusive, when it imposed discipline of dismissal upon E. J. Street, Station Baggage man, Pennsylvania Station, Baltimore, Maryland, Chesapeake Division, effective January 25, 1968.

(b) Discipline of dismissal from service imposed on E. J. Street be removed from his service record.

(c) E. J. Street be compensated in accordance with Rule 7-A-1(d) for all monetary loss sustained.

OPINION OF BOARD: While employed as a Station Baggage man and engaged in unloading U. S. Mail from a car, Claimant sustained a personal injury that resulted in his being incapacitated for a period of time. While off duty account of the injury Claimant attended an investigation at which time he gave an incorrect response to a question. As a result of the investigation Claimant was charged with (1) Violation of Safety Rule, and (2) Making false statement during investigation; and was notified to report for trial on such charges. Following a trial at which Claimant failed to appear, he was dismissed from service on the second charge and the first charge was dropped.

Without in any way condoning the failure of Claimant to appear at the trial, we find that under the unusual circumstances of this particular case and considering Claimant's prior record and length of service that the discipline imposed was excessive. Claimant has now been out of service for approximately three years, which, in our opinion, is sufficient discipline for the offense involved under the circumstances of this particular case. Accordingly, Claimant should be restored to service with seniority and

other rights unimpaired, but without compensation for time lost. His service record should be corrected to reflect the modification of discipline.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated to the extent indicated in the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1970.