

Award No. 18439

Docket No. CL-18720

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, 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-6740) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of fifteen days suspension on A. J. Lynch, Clerk (Position G-95), Penn Yard, Buffalo, New York, Buffalo Division, Northeastern Region.

(b) Claimant A. J. Lynch's record be cleared of the charges brought against him on July 17, 1968.

(c) Claimant A. J. Lynch be compensated for fifteen days wage loss sustained by him as a result of the discipline.

OPINION OF BOARD: Claimant was suspended after having been charged with and found guilty of insubordination. The substance of the alleged offense is that Claimant showed disrespect for an official of Carrier. Claimant is not charged with failure or refusal to carry out an order. Indeed, Carrier's witnesses testified that Claimant is uncommonly efficient and thorough in his work.

Carrier alleges that Claimant demonstrated disrespect by his choice of language in replying to a criticism of the official. To determine whether or not language is disrespectful a comparison must be made to the standard of language commonly used in the environment involved. Language considered acceptable in a freight yard office may be unacceptable in another setting, for instance, a girl's school theology class. If we use the language of the official to whom Claimant addressed the allegedly offensive remarks as the standard, we are compelled to conclude that Claimant's language far surpassed the standard. Since an employee cannot be held to a higher standard than his superior, we find that Claimant's remarks could not be reasonably construed as being disrespectful. Thus, he was not insubordinate. Our view that Claimant was aware of and did not go beyond the acceptable standard of language usage is fortified by the fact that his record of fifty-one year's service is unblemished and, after all that time, his immediate supervisor who

has known Claimant for more than a score of years described Claimant as the best and most cooperative employe with whom he has ever worked.

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

Claimant was not guilty of the offense with which he was charged.

AWARD

Claimant shall be compensated for the difference between the amount he earned while out of service and the amount he would have earned had he not been wrongfully suspended.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1971.