

Award No. 18586
Docket No. CL-18982

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,
NORTHERN REGION**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6839) that:

1. The Carrier did not properly determine that Mail and Baggage Attendant Mr. Louis J. Ricigliano was guilty of the charge — "Participating in an altercation with D. Steves, Mail and Baggage Attendant on the Station Platform at New Haven, Connecticut, at approximately 1:05 A.M., Tuesday, March 18, 1969, resulting in your reporting a personal injury." And the discipline imposed by the Carrier was unreasonable, unjust and in violation of the Clerks' Agreement effective September 15, 1957.

2. Mr. Ricigliano's record shall be cleared of the charge and he be compensated for wage losses sustained resulting from Management's action as set forth in our claim.

OPINION OF BOARD: The Claimant was employed by Carrier as a Mail and Baggage Attendant. On March 18, 1969, he was notified to attend a formal hearing on the following charge:

"Participating in an altercation with D. Steves Mail and Baggage Attendant, on the Station Platform at New Haven, Connecticut, at approximately 1:05 A.M., Tuesday, March 18, 1969, resulting in your reporting a personal injury."

Hearing was held on March 24, 1969, and on April 3, 1969, Claimant was notified that he had been found guilty of the charge and that he would be withheld from service March 18, 1969 to April 6, 1969, or a total of twenty days actual suspension. A transcript of the hearing conducted on March 24, 1969, has been made a part of the Record.

The Board has carefully reviewed the transcript of the hearing conducted on March 24, 1969. It shows that an altercation occurred between

the Claimant and Mail and Baggage Attendant Steves. However, it does not show that Claimant was the aggressor; that he actively participated in the altercation, or that he was guilty of any conduct for which he could properly be censured. We find, therefore, that the Carrier failed to justify any disciplinary action against the Claimant, and that its action in withholding him from service for twenty days was arbitrary and capricious. The claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.