



Award No. 18902
Docket No. CL-19062

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, 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 Board of the Brotherhood (GL-6869) that:

1. Carrier did not comply with their agreement with the General Chairman to restore Clerk J. T. Coleman, Oswego, N. Y. to service after serving a suspension of six (6) months.
2. That Mr. Coleman be reimbursed for all time lost from the date the Carrier agreed to restore him to service, November 3, 1969, to July 17, 1970 inclusive, the date he was actually restored to service.

OPINION OF BOARD: Claimant, as a result of an investigation held on April 3, 1969, was discharged from service for absenting himself from duty without proper authority and partaking of alcoholic beverages in a bar during his assigned hours on March 25, 1969. Subsequent to the imposition of the dismissal penalty, several conferences were held between the General Chairman and Carrier's designated officers. The Organization contends that Claimant had 26 years of unblemished service prior to the involved occurrence, and that Carrier agreed to restore Claimant to service after the expiration of six months from date of his dismissal. Claimant was restored to service 15 months after date of dismissal. Carrier contends that the restoration to service at expiration of 15 months exemplifies leniency and that they (Carrier) were under no obligation to restore to service. Carrier also denies that it ever made a commitment or reached any understanding or agreement to the effect that Claimant would be returned to service after a six month suspension.

The record fails to disclose that Carrier ever made a firm commitment that Claimant would be restored to service at the expiration of six months from the date of dismissal. Carrier did state that it never restored anyone to service until the expiration of six months from dismissal. This does not constitute a firm commitment that Claimant in this instance would be positively restored at the expiration of six months from his date of dismissal. Therefore, on the basis of the record in this case, this claim will be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

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

the Claimants' presence on the work position covering the site and that the absence of tagging had been repeatedly observed by management. Thus the majority has relied upon faulty knowledge and ignored the fact of management's contributory negligence to find in the Claimants a responsibility for something they concededly did not do.

The confronting agreement requires that an employe accused be " * * * apprised in writing of the precise charge against him." The majority's holding that the Carrier's notice to the present Claimants "adequately apprised" them is, in itself, an admission that the notice was not "precise"; in fact, a reading of the notice will show that there was no "charge" at all.

The majority's philosophy in their concluding paragraph is obviously gratuitous and therefore dicta; it begs the question because it assumes as proven the fault, which we have shown above, not proven to be the Claimants.

Award No. 18903 is in error; I dissent.

W. W. Altus, Jr.
Labor Member