

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19367  
Docket Number CL-19361

Paul C. Dugan, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6942)  
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of five days' suspension, also discipline of dismissal on Mark Harkins, Reservation and Information Clerk, Ticket Sales and Service Bureau, Pennsylvania Station, New York, New York, New York Region, Metropolitan Seniority District.

(b) Claimant Mark Harkins' record be cleared of the charges brought against him on September 9, 1969, and September 29, 1969.

(c) Claimant Mark Harkins be compensated for wage loss sustained by him as a result of the discipline.

OPINION OF BOARD: Claimant was charged by Carrier with: "(1) Failure to report for your assignment at 9:00 A.M. on September 4, 1969; (2) Failure to report for your assignment at 9:00 A.M. on September 5, 6, and 7, 1969." and was notified to appear at an investigation in regard to said charges on September 24, 1969, continued to September 25, 1969 at the request of Claimant. Claimant failed to appear at the investigation and did not make a request to Carrier for a continuance. Carrier proceeded to hold the hearing and assessed a five days' suspension against Claimant in regard to said charges.

Claimant was also charged with: "(1) Affixing your signature to daily 'Sign-In' sheet #9, September 4, 1969, 9:00 A.M. to 5:30 P.M. for covering Position #294; (2) Falsifying your form AD 2500D under date of September 4, 1969." Investigations of the aforesaid charges were held on October 8, 1969 with the Claimant present and represented. Following the investigation, Claimant was advised by notice of discipline dated October 13, 1969 from J. F. Davis, General Passenger Agent, that he was being disciplined in regard to the aforesaid charges by dismissal from Carrier's service.

The Organization contends that Claimant did not have a fair and impartial trial in connection with the charges of failure to report for assignment on September 4, 5, 6 and 7, 1969 because the investigation in regard to said charges was held without the Claimant present. We find this contention to be

without merit inasmuch as the Claimant failed to make a request for a continuance in regard to the hearing being held on September 25, 1969. Further, the Claimant's contention that he called and reported off sick on said date is not supported by any evidence in the record. Mere allegations without probative proof are of no probative value.

Close examination of the record in regard to the separate charges made against Claimant in this instance shows that Carrier met its burden of proving by substantial evidence that Claimant was guilty in both instances as charged. We also find that there is nothing in the record which warrants reversing Carrier's decision in dismissing Claimant from Carrier's service in regard to the charges assessed against him for failure to affix his signature to the daily sign-in sheet and falsifying form AD 2500D on September 4, 1969. We also find in regard to the charge of failure to report for his assignment on September 5, 6 and 7, 1969 that the discipline of five days' suspension was proper and reasonable under the circumstances.

Therefore, we must deny this 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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E A Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.